IN THE

Supreme Court of the United States

October Term, 1952.

No. 167.

UNITED STATES OF AMERICA,
Appellant,

v.

JOSEPH KAHRIGER.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Brief for Appellee

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CITATIONS

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BRIEF FOR APPELLEE.

OPINION BELOW.

The opinion of the District Court (R. 3-7) is reported in 105 F. Supp. 302.

JURISDICTION.

The order of the District Court dismissing the information was entered May 7, 1952 (R. 7). A notice of appeal was filed on June 5, 1952 (R. 7). On October 13, 1952, this Court noted probable jurisdiction (R. 19). The jurisdiction of this Court is conferred by 18 U. S. C. 3731. See also Rules 37(a)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED.

Whether the occupational tax provisions of the Revenue Act of 1951 and the regulations issued thereunder which levy a tax of $50 per year on persons engaged in the business of accepting *taxable* wagers and require such persons to register by filing an information return with the Collector of Internal Revenue, open to public inspection, prescribe criminal penalties for engaging in such business without registration or payment of tax, but which exclude from tax and registration: persons who accept wagers who do not make it their business; persons engaged in games in which "usually" (i) the wagers are placed, (ii) the winners are determined, and (iii) the distribution of prizes or other property is made in the presence of all persons placing wagers in such game; and persons engaged in the business of accepting wagers who conduct a parimutuel wagering enterprise licensed under State law, are unconstitutional be-

cause: (a) they are solely intended to penalize illegal gambling in the various States under the pretense of exercise of the Federal Tax power, in violation of the Tenth Amendment; and (b) they are so confiscatory, vague and indefinite, arbitrary and self-incriminatory as to violate the Fifth Amendment.

Constitutional Provisions, Statutes and Regulations Involved.

1. The Fifth Amendment provides, *inter alia*, that—

> No person * * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; * * *.

2. The Tenth Amendment provides, that—

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

3. Section 471(a) of the Revenue Act of 1951 (c. 521, Title IV, 65 Stat. 529) (*referred to in Brief as Wagering Act*), provides, *inter alia:*

SUBCHAPTER A—TAX ON WAGERS.

[26 U. S. C., Supp. V, 3285].

(a) **Wagers.** There shall be imposed on wagers, as defined in subsection (b), an excise tax equal to 10 per centum of the amount thereof.

(b) **Definitions.** For the purposes of this chapter—

(1) The term "wager" means (A) any wager with respect to a sports event or a contest placed with a

person engaged in the business of accepting such wagers, (B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and (C) any wager placed in a lottery conducted for profit.

(2) The term "lottery" includes the numbers game, policy, and similar types of wagering. The term does not include (A) any game of a type in which usually (i) the wagers are placed, (ii) the winners are determined, and (iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and (B) any drawing conducted by an organization exempt from tax under section 101, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

* * * * * * * *

(d) **Persons liable for tax.** Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery.

(e) **Exclusions from Tax.** No tax shall be imposed by this subchapter (1) on any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law, and (2) on any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 3267.

[26 U. S. C., Supp. V, 3287].

Certain provisions made applicable.

All provisions of law, including penalties, applicable

with respect to any tax imposed by section 2700 shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the tax imposed by this subchapter. In addition to all other records required pursuant to section 2709, each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is so liable. * * *

SUBCHAPTER B—OCCUPATIONAL TAX.

[26 U. S. C., Supp. V, 3290].

Tax. A special tax of $50 per year shall be paid by each person who is liable for tax under subchapter A or who is engaged in receiving wagers for or on behalf of any person so liable. * * *

[26 U. S. C., Supp. V, 3291].

Registration. (a) Each person required to pay a special tax under this subchapter shall register with the collector of the district—

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

(b) Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

(c) In accordance with regulations prescribed by the Secretary, the collector may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter. * * *

[26 U. S. C., Supp. V, 3292].

Certain provisions made applicable.

Sections 3271, 3273(a), 3275, 3276, 3277, 3279, and 3280 shall extend to and apply to the special tax imposed by this subchapter and to the persons upon whom it is imposed, and for that purpose any activity which makes a person liable for special tax under this subchapter shall be considered to be a business or occupation described in chapter 27. No other provision of subchapter B of chapter 27 shall so extend or apply. * * *

[26 U. S. C., Supp. V, 3293].

Posting.

Every person liable for special tax under this subchapter shall place and keep conspicuously in his principal place of business the stamp denoting the payment of such special tax; except that if he has no such place of business, he shall keep such stamp on his person, and exhibit it, upon request; to any officer or employee of the Bureau of Internal Revenue. * * *

[26 U. S. C., Supp. V, 3294].

Penalties.

(a) Failure to pay tax. Any person who does any act which makes him liable for special tax under this subchapter, without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than $1,000 and not more than $5,000.

(b) Failure to post or exhibit stamp. Any person who, through negligence, fails to comply with section

3293, shall be liable to a penalty of $50, and the cost of prosecution. Any person who, through willful neglect or refusal, fails to comply with section 3293, shall be liable to a penalty of $100, and the cost of prosecution.

(c) Willful violations. The penalties prescribed by section 2707 with respect to the tax imposed by section 2700 shall apply with respect to the tax imposed by this subchapter. * * *

SUBCHAPTER C—MISCELLANEOUS PROVISIONS.

[26 U. S. C., Supp. V, 3297].

Applicability of federal and state laws.

The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States or of any State for engaging in the same activity, nor shall the payment of any such tax prohibit any State from placing a tax on the same activity for State or other purposes. * * *

[26 U. S. C., Supp. V, 3298].

Inspection of books.

Notwithstanding section 3631, the books of account of any person liable for tax under this chapter may be examined and inspected as frequently as may be needful to the enforcement of this chapter. * * *

(26 C. F. R. 325.21(b));

Regulation: "A person is engaged in the business of accepting wagers if he makes it a practice to accept wagers with respect to which he assumes the risk of profit or loss depending upon the outcome of the event or the contest with respect to which the wager is accepted. It is not intended that to be engaged in the business of accepting wagers a person must be either so engaged to the exclusion of all other activities or even primarily so engaged. Thus, for example, an in-

dividual may be primarily engaged in business as a salesman and also for the purpose of the tax be engaged in the business of accepting wagers."

STATEMENT.

On March 17, 1952, a two-count information was filed in the United States District Court for the Eastern District of Pennsylvania charging that defendant, being in the business of accepting wagers, as defined in 26 U. S. C. 3285, *supra* (1), failed to pay the occupational tax of $50 per year as required by 26 U. S. C. 3290, *supra*, and failed to register with the collector of his district as required by 26 U. S. C. 3291, *supra*, in violation of 26 U. S. C. 2707(b), and 3294, *supra* (R. 2).

The defendant moved to dismiss the information on the ground that the statute on which it is based is unconstitutional in that it constitutes a penalty in the guise of a tax; that it is arbitrary and unreasonable; that it attempts to regulate an activity which is entirely within the jurisdiction of the state; that it imposes a tax which is not uniform, in that certain persons are excluded from its operations; and that it compels a person to be a witness against himself (R. 3).

Additional reasons assigned in the Briefs filed in the lower court and argued were that the statute is vague and indefinite; that the statute violates the Due Process Clause of the Fifth Amendment (R. 4).

In its opinion granting defendant's motion to dismiss, the District Court stated:

"* * * In addressing ourselves to the above question we find it necessary to consult the many decisions sub-

mitted to us by the parties and those suggested by our own research. * * * But it seems to us that the case which most clearly reveals the silver thread of truth as contained in the decisions is to be found in the case of the *United States v. Constantine*, 296 U. S. 287, decided by the United States Supreme Court on December the 9th, 1935." (R. 5)

The court below then quoted in part from the opinion of Justice Roberts in that case (R. 5-7), and stated:

"No language that we could use would more clearly or more forcefully express the law of the land on this subject. In addition to being the pronouncement of the Supreme Court of the land on the principle involved, and by which we are bound, we find ourselves in full accord with it, both in letter and in spirit" (R. 7).

SUMMARY OF ARGUMENT.

The Wagering Act is an attempt by Congress to penalize intrastate crime, specifically illegal gambling, solely by means of the tax power under Article I, Section 8. Congressional debates reveal that Congress was aware that they could not tax illegal gambling in the States under the decisions of this Court, interpreting the Tenth Amendment: *United States v. Constantine*, 296 U. S. 287; *United States v. Butler*, 297 U. S. 1; *Linder v. United States*, 268 U. S. 5.

Therefore, a Wagering Act was cleverly written which according to its sponsors in Congress pretended to tax all gambling, legal as well as illegal, but in fact by means of a system of exclusions and definitions exempted practically all legal gambling in the States. In order to relieve persons who were engaged in gambling in Nevada from taxation, where practically all forms of gambling are permitted under a State license, a unique definition of wagering was adopted that excluded from the provisions of the Wagering Act the bulk of the legalized gambling in that State, namely card games, poker, blackjack, roulette games, dice games and various types of gambling wheels. Wagers made by charitable organizations were also excluded from the tax as well as "friendly" types of wagers, vaguely defined by regulation, and wagers made by persons not engaged in the practice of making wagers.

In addition to the confiscatory tax levy, 10% of the gross income, each person who engaged in illegal gambling had to register and pay a special occupational tax of $50 for himself as well as for all his employees and fill out a special form, 11-C (R. 9), in order to obtain a tax stamp without which it was unlawful to operate the gambling business. These information returns were filed with the Collector of Internal Revenue of the district where the business was operated. The returns were available for public inspection and were, in fact, published by the Collector in the newspapers.

The Commissioner of Internal Revenue, in testifying before the Senate Finance Committee, had advised against the adoption of the Wagering Act. In his opinion, it was not a revenue measure.

The Kefauver committee, which had investigated crime and whose disclosures, according to the Government, had inspired this legislation, did not recommend this Act. They

vigorously opposed it and the Congressional debates make it clear that the members of that committee believed that persons engaged in gambling in the various States would go underground since compliance with the Act was impossible and that very little, if any, revenue would be obtained. They also questioned its constitutionality, citing *United States v. Constantine, supra.* The Kefauver committee proposed certain amendments to the Bill which in their opinion would have obtained revenue from those engaged in gambling.

Senator George, Chairman of the Senate Finance Committee, attacked the recommendations of the Kefauver committee contending *inter alia* that one of the basic recommendations was unconstitutional because its purpose was to punish an offense. The recommendations of the Kefauver committee were defeated and the Wagering Act was passed. The revenue obtained for the fiscal year ending June 30, 1952, was $4,615,196.42.

The effect of furnishing the information required by Form 11-C was to compel the registrant to admit violating the laws of the State where the business was operated, thus subjecting the registrant to definite criminal prosecutions by the local and probably by Federal authorities. The public listing of gamblers by the Government was naturally not conducive to the continued operation of the business. Requiring persons to incriminate themselves in order to continue in business clearly discloses that revenue was not the purpose of this legislation, but police regulations designed to eliminate local gambling.

It truly can be said that any resemblance between this Wagering Act and a revenue measure is purely co-incidental.

ARGUMENT.

Introductory.

Essential to a critical analysis of the constitutional validity of any statute is an understanding of the problems which gave rise to its enactment. The Wagering Act was the result of the publicized investigations of the Special Committee to Investigate Organized Crime in Interstate Commerce, popularly known as the Kefauver Committee.

Judge Goodman in *United States v. Nadler*, 105 F. Supp. 918, 919 (N. D. Cal. 1952), remarked:

> "All those who can see and read know that Congress after investigations in 1950 and 1951, determined to do something about the 'wagering evil' and its attendant racketeering activities. We need not speculate about the Congressional motives concerning these matters. They are too obvious. (Footnote.) The investigations of the Senate's Special Committee to Investigate Organized Crime in Interstate Commerce (so-called Kefauver Committee) were too vividly reported via radio and television to be soon forgotten. Congress adopted the wagering statutes October 20, 1951."

And the Government in its Brief stated:

> "The particular need for this type of information with relation to the tax on the business of gambling is made clear by the legislative history of the statute here involved. The Kefauver Committee, whose investigations inspired the instant legislation, * * *" (U. S. Br. 15).

What has been generally overlooked is that the Wagering Act was passed over the vigorous protests of Senator Kefauver and the members of his Committee.

Senator Kefauver stated (97 Cong. Rec. 12231-12233):

"MR. KEFAUVER: Mr. President, the amendment is offered on behalf of the members of the former Senate Crime Investigation Committee. I think it is important first to examine part VI of the bill, which has to do with wagering.

This provision provides for a special tax of 10 percent of the amounts bet in an organized lottery, where the people are not all present at the time the lottery is operated. It provides also for a tax of 10 percent of the amount which may be bet with bookmakers, provided, however, that if a bookmaker lays off any part of a bet with a so-called lay-off man, he may claim credit for the amount, so laid off, and the person to whom it is laid off will have to pay the tax. The interpretation and explanation would apply to the policy business or the numbers racket which is prevalent in so many large cities.

The bill also provides for an occupational tax of $50 for each person who is engaged in wagering. That means that any person who is operating a lottery or any person who is engaged in the numbers business or who may be an agent operating for someone else, will have to pay an occupational tax of $50 in order to carry on his business. It is calculated that this tax would raise $400,000,000 a year.

I wish to show—and the other members of the committee join with me in the idea—that this tax would not raise such an amount of revenue. If the laws against gambling are strictly enforced, and if the income tax laws are amended, as we propose in the substitute amendment, a great deal more money will be recovered that way. Moreover, a great deal more money will be forced into the legitimate channels of commerce, where

the State and Federal Governments will receive taxation. [Italics supplied.]

I realize that the Committee on Finance has been hard put to find methods of raising revenue. However, it is our opinion that this is the wrong approach, and that the ill results would be much worse than would be justified by the amount of revenue which might result from the amendment.

MR. KERR: Mr. President, will the Senator yield for a question?

MR. KEFAUVER: Let me speak for a few minutes, and then I shall be glad to yield.

The proposal to impose a tax on wagering is morally offensive. It cannot be enforced, and it will not raise a substantial amount of revenue. It will drive bookies underground, and will discourage local and State officials from enforcing their laws against gambling.

Let it be pointed out that this provision does not apply to the operators of casinos. It does not apply to roulette, organized club games, and other type of gambling. It applies only to the three specified types of gambling.

First. A Federal tax such as proposed in this measure would put the stamp of United States Government approval on gambling outlawed in 47 out of 48 States. It is true that the United States has never made a distinction between taxing sources of income—whether legal or illegal. But what we are asked to do here is to impose a special levy on gambling applicable to professional gamblers and paid by them. It is far different from merely saying to all taxpayers—whatever their incomes and whatever their occupations—that they must pay a tax on all their earnings equally—whether obtained from their labor, dividends, gifts, or their ill-gotten gains. * * *

I ask, what is the purpose of this tax? If it is to raise revenue—and I will show later that the Federal Government would collect far less than estimated—why not tax the gambling casinos which still flourish in our great cities, the organized crap games, roulette, draw poker, blackjack, noncharity bingos, and other games that mulct our people of huge sums each year? And why stop at gambling? Why not tax the profits of other organized criminal activities such as prostitution, moon-shining, narcotics trade, and extortion and shake-down rackets?

But if the purpose is to suppress gambling, root out the racketeers, curb crime, and expose corruption, let us attack the problem directly. The Crime Investigating Committee has made many legislative recommendations for dealing with organized gambling and other criminal activities. These proposals—which have been carefully drawn after many months of hearings—place upon the local communities the final responsibility for ridding themselves of gangster elements. Let us not attempt to use the Federal tax authority to do a job which it cannot do and is not designed to do. Let us not convert the Internal Revenue Bureau into a crime-control ageney. * * *

We cannot have successful law enforcement unless the local people have the responsibility. This provision would put a veritable army of tax men into the local law enforcement field, in everybody's back yard, and change our traditional method of law enforcement, which places the primary responsibility upon the local people. * * *

Second. The 10-percent gambling tax cannot be effectively enforced. Traditionally under our system, payment of taxes has been voluntary. The Bureau of

Internal Revenue relies largely upon the cooperation of citizens for compliance with the tax regulations. The method of collecting the gambling tax would follow the same pattern if the plan proposed, requiring books to be kept, were followed. If forms are sent to the taxpayers and they do not put in the proper information, the forms can be sent back, or they can be required to furnish full statistics. But it is another thing to send a veritable army of internal revenue agents into every city in the country, when such agents are not available and try to track down a particular bookie, who is operating on a transitory basis, in order to try to collect a tax from him.

Under this proposal, bookmakers and the numbers operators, their agents and runners would register with the Internal Revenue Bureau and pay an occupational tax of $50 a year. As part of his registration, a professional gambler would have to identify those persons receiving wagers on his behalf and in addition disclose the i entity of those persons for whom he may be acting as agent. * * *

Enforcement will be one of the most formidable tasks ever undertaken by Internal Revenue Bureau. *It will require thousands of agents trained in criminal investigation to bring out compliance and collection of taxes.* (Italics supplied.)

Mr. Dunlap, the newly appointed Commissioner of Internal Revenue, appeared before the committee, and I made inquiry of some Treasury officials. They are not prepared to enforce this tax. If they are not able to enforce it, as will be the case, they will be held up to ridicule, and thus there will be a lessening of respect for this great department of our Government. Furthermore, they will be blamed for the continuation of this type of gambling.

Enforcement will be one of the most formidable tasks ever undertaken by the Internal Revenue Bureau. As I said, it will require thousands of agents trained in criminal investigation to bring about compliance and collection of taxes. It may involve tracing hundreds of transactions, through dummy corporations, agents, subagents, and runners, and penetrating the hundreds of artful devices to conceal the identity of those liable for payment.

In brief, the registration requirements and the tax will drive the bookies underground. * * *

I think that the Treasury experience with the collection of income taxes from the gamblers and racketeers belies any hope that the Government will get considerable revenues from this source.

The Treasury each year is defrauded of huge sums of money in taxes by those engaged in organized gambling activities. Their returns, for the most part, are fraudulent; their incomes are grossly understated. The amount of tax they pay has no relation to their gross earnings or taxable income. * * *

As the Wall Street Journal said, if ever there was a plan to burn down city hall to get rid of rats, this is it. * * *

I do not approve particularly of a slot-machine tax, but there is quite a difference between a special tax on an instrument like a slot machine and a tax on a method of life or doing business. It would be interpreted as giving a sanction to the methods of gamblers, and it would discourage local law-enforcement officers. Furthermore it would pass the responsibility for enforcement onto the Federal Government, and the Federal Government would not get any substantial amount of money, certainly not so much money as would be

provided by the amendments which are offered in the nature of a substitute.

What are the amendments? First, we have found that many persons operating gambling casinos charge off good will. In Florida it is called ice. It is the payment which is made to enforcement officers. In California it is called operating expenses. They charge off a tremendous amount. Of course, they keep their books dishonestly, in the first place. So the first amendment would prevent the charging off of expenses paid or incurred as a result of illegal wagering. * * *

The last part of the amendment provides that if during a given year anyone earns more than $10,000 on an illegal transaction or in an unlawful trade or business, he must file a statement of net worth with his income-tax return.

* * * * * * * * *

In many editorials in many of the outstanding newspapers, such as the Wall Street Journal and the Washington Star, and in many editorials in magazines the position is taken that a refusal by Congress to adopt the amendment we are proposing would constitute an invasion of the field of law enforcement and would be a discouragement to enforcement officers.

Furthermore, Mr. President, every one of the amendments contained in the substitute was considered by the American Bar Association's Commission on Organized Crime. That commission is headed by Judge Robert Patterson, an outstanding lawyer; and either other distinguished members of the American Bar Association serve on the commission. They unanimously recommend every one of the amendments contained in the substitute. It was submitted to the house of delegates of the American Bar Association, at the meeting last week

in New York; and each of the amendments was approved by the members of the house of delegates.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point the findings of the special committee of the American Bar Association which were approved by the house of delegates of that association, approving the four items which were submitted today as a substitute, and which will be offered again tomorrow."

The amendments offered by Senator Kefauver for himself and other Senators were rejected by a vote of 49 to 29, 18 not voting.

I.

The Wagering Act on its face is an attempt to penalize illegal intrastate gambling under the pretense of exercising the Federal tax power—the Act is not a Revenue measure.

The statute is nothing but an attempt to regulate or impose the Congressional will in a field in which Congress has no regulatory power, namely, illegal gambling in the States, in violation of the Tenth Amendment of the Constitution.

No psychoanalyst is needed to discover the motives of Congress in passing this Wagering Statute. The obvious and inevitable effect of the statute is crystal clear. There is certainly no doubt of the actual effect of the statute (Appellee's Br. 1A-45A).[1]

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[1] **Davis,** Official Notice 62 Harv. L. Rev. 537, 556 (1949); **Quong Wing v. Kirkendall,** 223 U. S. 59, 64 (1912).

To get the right answer we must first put the right question. The Appellant's statement of the question presented in this case (U. S. Br. 2) is simply a truism. Of course, a revenue measure is not unconstitutional because of "incidental regulatory features". We concede that a Federal excise tax does not cease to be valid merely because it regulates, discourages or ever deters the activities taxed and even though the revenue obtained is negligible; and that an Act of Congress which on its face purports to be an exercise of the taxing power is not any the less so because the tax tends to restrict or suppress the thing taxed and that in such a case it is not within the province of courts to inquire into the unexpressed purpose or motives which may have moved Congress to exercise a power constitutionally conferred upon it. *Fernandez v. Wiener*, 326 U. S. 340, 362 (1945); *United States v. Sanchez*, 340 U. S. 42 (1950).

But this case is quite different. This statute's sole purpose is to penalize only illegal gambling in the States through the guise of a tax measure. This is forbidden by the Constitution. The Constitution does not confer upon Congress any police power. *United States v. Keller*, 213 U. S. 138, 148 (1909).

In *United States v. Butler*, 297 U. S. 1, 69, 70 (1936), this Court stated:

> "The power of taxation, which is expressly granted, may, of course, be adopted as a means to carry into operation another power also expressly granted. But resorts to the taxing power to effectuate an end which is not legitimate, not within the scope of the Constitution, is obviously inadmissible. Congress is not empowered to tax for those purposes which are within the exclusive province of the States. Gibbons v. Ogden, 9 Wheat. 1, 199, 6 L. Ed. 23, 70. * * *

in the Child Labor Tax Case (Bailey v. Drexel Furniture Co.), 259 U. S. 20, 66 L. Ed. 817, 42 S. Ct. 449, 21 A. L. R. 1432, and in Hill v. Wallace, 259 U. S. 44, 66 L. Ed. 822, 42 S. Ct. 453, this Court had before it statutes which purported to be taxing measures. But their purpose was found to be to regulate the conduct of manufacturing and trading, not in interstate commerce, but in the States,—matters not within any power conferred upon Congress by the Constitution—and the levy of the tax a means to force compliance. The court held this was not a constitutional use, but an unconstitutional abuse of the power to tax. In Linder v. United States, 268 U. S. 5, 69 L. Ed. 819, 45 S. Ct. 446, 39 A. L. R. 229, *supra*, we held that the power to tax could not justify the regulation of the practice of a profession under the pretext of raising revenue. In United States v. Constantine (decided December 9, 1935) (296 U. S. 287, ante, 233, 56 S. Ct. 233), we declared that Congress could not, in the guise of a tax, impose sanctions for violation of state law respecting the local sale of liquor. * * *"

All powers granted by the Constitution are subject to the fundamental qualification that the federal nature of our government must be maintained. The possibility that particular legislation might impair the dual system of government, which it was the purpose of the Constitution to preserve, has been adverted to by this Court as a reason for holding it invalid.

Chief Justice Marshall declared in a much-quoted paragraph in *McCullough v. Maryland*, 4 Wheat. 316, 423 (1819):

"Should Congress, in the execution of its powers, adopt measures which are prohibited by the constitution; or should Congress, under the pretext of execut-

ing its powers, pass laws for the accomplishment of objects not entrusted to the government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land."

Again in *Linder v. United States*, 268 U. S. 5, 17 (1925), this Court stated:

"Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not entrusted to the Federal Government. And we accept as established doctrine that any provision of an act of Congress, ostensibly enacted under power granted by the constitution, not naturally and reasonably adapted to the effective exercise of such power, but solely to the achievement of something plainly within power reserved to the States, is invalid, and cannot be enforced."

The test is not whether the purposes or ends which it is sought to accomplish are achieved, but whether, however achieved, they are the kind of purposes or ends which have been entrusted to the Federal Government. Were any other test applied we should have a centralized, not a federal, system.

In construing an Act of Congress with a view to determining its constitutionality, it is necessary for the Court to consider its natural and reasonable effect. In *Collins v. New Hampshire*, 171 U. S. 30 (1898), this Court held invalid a State statute making it a crime to sell oleomargarine that had not been artificially colored pink. There was nothing in the statute itself to show that the purpose of the legislature in passing it was to prohibit sales of oleomargarine. But looking at the natural and reasonable effect of the stat-

ute, the Court found that to color oleomargarine pink would render it unsalable and therefore held that the statute, although in the form of a regulation, was in fact a prohibition. The court stated (pages 33, 34):

> "If enforced, the result could be foretold. To color the substance as provided for in the statute naturally excites a prejudice and strengthens a repugnance up to the point of a positive and absolute refusal to purchase the article at any price. The direct and necessary result of a statute must be taken into consideration when deciding as to its validity, even if that result is not in so many words either enacted or distinctly provided for. In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect."

Attempts have been made by Congress to accomplish something not within the powers delegated to the United States by casting the law in the form of a revenue statute. But whenever a federal excise tax was in substance a police regulation so obviously unrelated to any fiscal or national need as to be outside the Federal taxing power, it was held invalid. *Charles C. Steward Machine Co. v. Davis*, 301 U. S. 548, 591 (1937), citing *United States v. Constantine*, 296 U. S. 287. The broad aspect of this question is stated in note 5 to the opinion in *Railroad Retirement Board v. Alton Railroad Co.*, 295 U. S. 330 (1935):

> "When the question is whether the Congress has properly exercised a granted power the inquiry is whether the means adopted bear any reasonable relation to the ostensible exertion of the power. Mugler v. Kansas, 123 U. S. 623, 661; Hammer v. Dagenhart, 249 U. S. 251, 276; Bailey v. Drexel Furniture Co., 259 U. S. 20, 27."

The Government contends that:

> "The principal difference between the taxes in the cases cited and the taxes imposed on gambling is that Congress believed that the latter would produce large revenues. (Footnote.) This in itself is sufficient to distinguish the cases in which this Court has invalidated an alleged tax on the grounds that it was not a true revenue measure but a penalty seeking to regulate matters not legitimately subject to Federal control. Both House and Senate Committee Reports estimated that the revenue to be derived from the two gambling taxes together would be $400,000,000" (U. S. Br. 9, 10).

But even where the title of an "Act" states that one of the purposes of the Act is to raise revenue this does not prove that it is a revenue measure. Other acts, not revenue measures, have expressed such a purpose. *Child Labor Tax Case*, 259 U. S. 20; *University of Illinois v. United States*, 289 U. S. 48 (1933).

This Court said in *Nigro v. United States*, 276 U. S. 332, 353 (1928):

> "Congress by merely calling an act a taxing act cannot make it a legitimate exercise of taxing power under Sec. 8 of Article I of the Federal Constitution, if, in fact, the words of the act show clearly its real purpose as otherwise."

Nor does the fact that the Act has raised large sums of money prove it to be a revenue measure. Thus in the *Head Money Cases*, 112 U. S. 580 (1884), the provision of an "Act to regulate immigration, requiring ship owners to pay a duty on each passenger coming to any port within the United States from a foreign port," was deemed not to impose a tax.

In *United States v. Butler*, 297 U. S. 1 (1936), the title of the Act read: "An act * * * to raise revenue for extraordinary expenses * * *" but this did not prove that the act must be treated as a revenue measure.

Furthermore, the Congressional debates reveal that the committee's estimate[2] was based on a misunderstanding (97 Cong. Rec. 12241):

"MR. KERR: * * * As I understand, the Senator's estimate—and if I am in error about it, I want him to correct me—is that those activities amount to between $17,000,000,000 and $30,000,000,000 annually. Mr. President, a 10-percent tax on those activities would amount, not merely to $400,000,000 but to anywhere from $1,500,000,000 to $3,000,000,000. That is what such a tax would yield. That estimate is based upon the statement the Senator from Tennessee himself made in reference to the extent of those operations.

MR. KEFAUVER: Mr. President, will the Senator from Oklahoma yield?

THE PRESIDING OFFICER (MR. SMITH of North Carolina in the chair): Does the Senator from Oklahoma yield to the Senator from Tennessee?

MR. KERR: I yield for a question.

MR. KEFAUVER: I wish to point out to the Senator from Oklahoma, in the first place, that *that estimate was an estimate of the over-all amount of gambling. Of course this bill does not relate to the second most lucrative kind of gambling, namely, that at casinos, including crap games and roulette.* [Italics supplied.]

MR. KERR: Mr. President, the junior Senator from

[2] In the period between November 1, 1951, and the end of the fiscal year June 30, 1952, the stamp tax collections amounted to $606,561.08. The amount of the excise tax collections (10% tax on wagers) amounted to $4,615,196.42. (Figures supplied by Commissioner of Internal Revenue.)

Tennessee *is correct in his statement of what is included.* But when he appeared before the Finance Committee, I, myself, asked him how much gambling would be affected by this bill; and he said that his estimate was between $17,000,000,000 and $30,000,000,000.

MR. KEFAUVER: *I understood that the Senator from Oklahoma was asking what was the over-all amount of illegal gambling.* However, that is aside from the point.

What I have been trying to make clear to the Senator is that such a provision would not produce anything, and therefore we wish to have it eliminated, so that the money will be used for other purposes, in legitimate channels of commerce." (Italics supplied.)

The problem of determining when a tax is not a tax may at times be difficult—the issue is one of form against substance—but if the condition of the imposition is the commission of a crime, the exaction large (10% on the gross income), applies in effect only to wagers illegal by State law, the registration provisions expose the registrant to local prosecution, and *wagering that is legal in the states exempt from taxation*, what masquerades as a tax is clearly a penalty. The purpose of a penalty is to compel obedience to the law, not to obtain revenue—though it may in fact produce revenue.

As to motive, it was stated in the Constantine case:

"Reference was made in the argument to decisions of this Court holding that where the power to tax is conceded the motive for the exaction may not be questioned. These are without relevance to the present case. The point here is that the exaction is in no proper sense

a tax but a penalty imposed in addition to any the state may decree for the violation of a state law. The cases cited dealt with taxes concededly within the realm of the federal power of taxation. They are not authority where, as in the present instance, under the guise of a taxing act the purpose is to usurp the police powers of the State."

This is the instant case.

The Wagering Act should be read in its entirety to understand its design, not just a single section;[3] but the government disregarded the first part of the Act, namely Subchapter A (Appellee's Br. 3, 4). For the purposes of this case the most significant features are the "wagers" not taxed, the persons who need not register and pay the $50 occupational tax.

Section 3290 imposes the special tax of $50 per year *only* on a person who is liable for the tax under Subchapter A or who is engaged in receiving wagers for or on behalf of any persons so liable. The pertinent regulation defining the scope of this tax is:

"A person is engaged in the business of accepting wagers *if he makes it a practice*[4] to accept wagers with respect to which he assumes the risk of profit or loss depending upon the outcome of the event or the contest with respect to which the wager is accepted. It is not intended that to be engaged in the business of accepting

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[3] Justice Frankfurter, **Some Reflections on the Reading of Statutes,** 47 Col. L. Rev. 529, 537.

[4] The exemption from taxation of "friendly" wagers introduces a strange theory in federal taxation—a tax depending whether the person who does something make a "practice" of doing it. A true excise tax is one that is levied whenever the transaction to be taxed occurs.

wagers a person must be either so engaged to the exclusion of all other activities or even primarily so engaged. Thus, for example, an individual may be primarily engaged in business as a salesman and also for the purpose of the tax be engaged in the business of accepting wagers" (26 C. F. R. 325.21(b)). (Italics supplied.)

The government argues that:

> "*United States v. Constantine*, 296 U. S. 287, the sole authority relied upon below, is entirely inapposite. It involved a special excise tax of $1,000 on dealing in liquor, applicable only where the business was conducted in violation of state law. The so-called tax being large in amount and conditioned on commission of a crime, this Court rightly held it to be 'a penalty for the violation of state law, and as such beyond the limits of federal power'. *However, the instant tax on wagers and the registration provisions attendant thereon, apply irrespective of the legality of gambling under state law*" (U. S. Br. 24, 25). (Italics supplied.)

This is a gross oversimplification. It fails to recognize that this Act was so drawn that practically only those engaged in wagering of the type for which they could be prosecuted in the various states were placed within a special occupational category,[5] compelled to register and pay taxes

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[5] "Section 461 of your committee's bill adds a new chapter 27A to the code which imposes a 10-percent excise tax upon wagers of certain types, principally those placed with bookmakers and lottery operators, and a $50 per year occupational tax both upon persons engaged in accepting such wagers and upon persons who receive wagers for the person so engaged. This is the same as the provision contained in the House bill." (Extract from S. Report No. 781, 82d Cong., 1st Sess., p. 112, September 18, 1951.)

on their occupation and wagers; but that persons engaged in wagering of the type for which they could *not* be prosecuted in the various states because they were licensed, and persons engaged in the many types of wagering that were legal in one state were, by a strange definition, relieved from liability of federal taxation and registration.

In the Constantine case, this Court pointed out that the $1,000 excise tax was forty times as great as the annual tax of $25 imposed upon all persons who were engaged in the business of a retail dealer in malt liquors. The Court there stated (p. 295):

> "* * * The so-called excise of $1,000 is forty times as great. It is ten times as great as the annual tax under Rev. Stat. Sect. 3244 for wholesale liquor dealers and brewers, and fifty times as great as that imposed upon dealers in malt liquors. If the imposts under Rev. Stat. Section 3244 were fixed in amount in accordance with the importance of the business or supposed ability to pay, the exaction in question is highly exorbitant. This fact points in the direction of a penalty rather than a tax."

Under this Wagering Act, essentially all wagering legal in the States is exempt from all taxes. But persons engaged in types of wagering that are illegal in the States must register and pay the $50 occupational tax and ten percent of each wager.

There are two classes of wagering in the States, legal and illegal. In 47 out of 48 states, wagering, as defined in the Act, is illegal, that is, one cannot obtain a license to engage in the business of accepting wagers which are taxable under the Act with the exception of those engaged in

pari-mutuel wagering enterprises licensed by the State,[6] which are not taxed under the Act.

In other words, one engaged in the business of accepting wagers as defined in this Act must violate the state law in order to engage in that business in 47 of the 48 states. In the 48th state, Nevada, where wagering or gambling, as it is usually called, is legalized, Senator McCarran of that state was concerned with the effect of the Wagering Act upon the licensed gambling activities in his State and asked some pertinent questions (97 Cong. Rec. 12239):

> "MR. McCARRAN: I merely desire to ask the Senator from Colorado whether in his judgment the House language deals with illegal gambling and does not affect licensed gambling when a sovereign state has licensed it.
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> MR. JOHNSON of Colorado: Of course the Supreme Court decisions require that in the collection of taxes no distinction be made between legal and illegal gambling.
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> MR. McCARRAN: If the Senator takes that position I assume he is taking the position we are going to legalize gambling out of business.
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> MR. JOHNSON of Colorado: No; that is not the position of the Senator from Colorado at all. I want to make a statement in reply to the Senator from Nevada at that point.
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> MR. McCARRAN: If that be the position which I never understood it to be—certainly I must do everything in my power to defeat that part of the bill.

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[6] There are 24 states at present that have laws that permit pari-mutuel enterprises for wagering, if licensed by the state (Appellee's Br. 37A, 38A). This Court takes judicial notice of the public laws of each state. New York Indians v. United States, 170 U. S. 1, 32.

MR. JOHNSON of Colorado: That is not the position. I shall read a statement which sets forth the effect of the proposed wagering tax on legalized gambling:

'EFFECT OF PROPOSED WAGERING TAX ON LEGALIZED GAMBLING

The wagering taxes provided by the bill are imposed without regard to the legality or illegality of gambling under the laws of any particular State. For this reason the proposed taxes have been criticized as being destructive of the revenue now being derived by the State of Nevada from legalized gambling. In this connection it should be emphasized that the gambling taxes provided by the bill are imposed principally upon wagering with bookmakers and the so-called numbers operators. It is believed that these latter forms of gambling furnish only an extremely small part of the revenue which the State of Nevada derives from gambling generally. The bulk of the legalized gambling in the State involves the operation of slot machines, which are specifically exempt from the wagering tax imposed by the bill, and from casino-type games, such as cards and dice, which are likewise not within the scope of the proposed tax. This is because the bill, in effect, exempts in general games involving player participation. In order to make this completely clear, the committee report specifies that within the scope of this exclusion are card games such as draw poker, stud poker, and blackjack, roulette games, dice games such as craps, bingo, and keno games, and the gambling wheels frequently encountered at country fairs and charity bazaars. It is likewise made clear that this listing is not intended to be exclusive, and that any other games of similar types would also be excluded. Be-

cause it is believed that the State of Nevada derives its principal gambling revenues from the operation of these excluded games, the proposed wagering tax should have only minor, if any, effects on the overall revenue of that State. Furthermore, since bookmakers and numbers operators should in most cases be able to pass the new tax on to the bettors, it seems likely that any revenues which the State of Nevada may derive from these two sources will not in any way be affected.'"

The grave concern that Senator Johnson of Colorado, a member of the Finance Committee, expressed concerning the effect of the proposed wagering tax upon the revenue of Nevada is very revealing in interpreting this Wagering Act.

In the State of Nevada, the 48th State, the effect of having to register and pay a 10% tax on wagers reduced the number of licenses issued to bookmakers from 26 to 5 (Appellee's Br. 39A). It is obvious, if in the only state where it is legal to pursue the business of a bookmaker the licenses issued dropped from 26 to 5, what the effect must be in the 47 states where it is illegal to pursue such an occupation.

Congress knew that legally no distinction in taxes could be made between legal and illegal gambling. Therefore a statute was written which does just that by *clever legal craftsmanship.*

If, to repeat, in 47 out of 48 states, wagering is illegal unless conducted by means of a state license, *and a Federal revenue statute is passed that excludes from taxes and registration those who have state licenses, and drawings conducted by charitable organizations, and in the 48th state where wagering is legal, the definition of wagering is so bizarrely drawn that practically all of the wagering trans-*

actions in that state are exempt from federal registration and taxation; then the conclusion is inevitable as it was in the Constantine case that the exaction "is in no proper sense a tax but a penalty imposed in addition to any the State may decree for the violation of a state law." (R. 6, 7).

If this statute is sustained it is impossible to conceive how any statute labeled a taxing measure and passed by Congress to penalize a local business, legal or illegal, or a particular group of people, and not to obtain revenue, may be declared invalid.[7] Cf. *Trusler v. Crooks*, 269 U. S. 475 (1926).

For example, suppose Congress desired to prohibit persons from operating automobiles who do not have drivers' licenses. A revenue statute, similar to the Wagering Act, might be passed levying the sum of $10 upon every operator of an automobile. This would be a reasonable excise tax. The statute would also provide that one must register with the Collector of Internal Revenue on a form open to public inspection, but if one had a state license to operate an automobile he would be exempt from federal tax and registration. Could anyone contend this would be a revenue measure or simply a method of bringing the authority of the Federal Government to penalize and prosecute persons for driving automobiles without having state licenses?

This is exactly what we have here. If one is engaged in the wagering business, as defined in this Act, he must first register by filing an information return with the Collector of Internal Revenue of the district where the business is lo-

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[7] And we may have more such "revenue" measures passed to regulate local crime: a tax on carrying on the business of a burglar, or a robber or a tenement house unless one is licensed by the state, in which event no tax would be levied or registration required. A determination whether a local crime had been committed would have to be eventually decided by the Federal courts. Cf. dissenting opinion in Rutkin v. United States, 343 U. S. 130, 137 (1952).

cated before he secured a tax stamp without which it would be illegal to operate (R. 10, see Par. 4 of 11-C).

The information furnished on the return reveals the number of employees or agents engaged in the business of receiving wagers, and the true name and residence of every such person. Every person engaged in the business of accepting wagers and liable to the 10% excise tax imposed by Section 3285 of the Internal Revenue Code and every person engaged in receiving wagers for or on behalf of any person so liable must file a return on Form 11-C. Not only the employer, but each employee must pay a special tax of $50 a year. The information return is filed with the Collector and the names and addresses of those who have obtained wagering tax stamps are made public (R. 15).

If one is engaged in selling liquor, marihuana, or operating slot machines, or stills, an information return is also required in order to obtain a tax stamp, but only the employer need file a return and pay a tax. He need not state the names and address of his employees, nor are they required to pay a tax (Appellee's Br. 27A-34A). *Nor are they exempt from registration and taxes if licensed by the State.*

An illegal wagering business might openly continue to exist and produce revenue for the United States Treasury on the sole condition that all the state and local law enforcement officials would refuse to enforce the local laws. To require one who is engaged in any business, but especially one that is illegal, to make public his employees, his modus operandi, is simply to make it impossible to carry on such a business if he complies with the Act, and Congress knew it. It is Prohibition all over again without the blessings of an Amendment.

Not only do committee reports and statements of committee members or the sponsors of legislation carry weight but remarks made during the course of legislative debates

reflect the general legislative understanding. *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 650-651 (1931); *Humphrey's Executor v. United States*, 295 U. S. 602, 625 (1935); *United States v. St. Paul M. & M. R. Co.*, 247 U. S. 310, 318 (1918).

The Senate Finance Committee considering H. R. 4473 (Internal Revenue Act of 1951) heard Commissioner of Internal Revenue John B. Dunlap before a closed meeting held on Sept. 5, 1951. He testified as to the cost of the enforcement of the measure, the amount of revenue that might be expected to be derived from it, and the difficulty of collecting the tax, and advised against its adoption (N. Y. Times, Sept. 6, 1951, p. 51, col. 6). He later confirmed his opposition to the bill and disclosed the tenor of his previous testimony when appearing before both the House and Senate Committees on Appropriation in an attempt to get appropriations for the enforcement of the Act for the subsequent year:

> "We are confronted in the Bureau of Internal Revenue with a type of task we have never had before, that is, we must prove, before these people will admit liability for this tax, that they are in a certain line of business which makes them subject to the tax. * * *
>
> In many cases that we know of, where a man has taken out these stamps, the local authorities have descended right on his place of business and have investigated them and, in many instances, arrested him for violating the gambling statutes, whatever they might be in that community. In fact, in one community the other day, the police brought a man in and the judge held that the mere fact that he purchased his stamp was conclusive evidence that he was a gambler and convicted him accordingly. * * *

That is the angle I brought up before the committees last year. I mean, last summer, when they were considering it. I told them at that time—I don't mind telling you—that if I were in the gambling business, I would be reluctant to walk into the internal revenue collector's office and pay $50 for the privilege of having my name turned over to the chief of police. I don't think I would do it and they are not going to do it. * * *

Of course, in my opinion, and it is my opinion, it is not primarily a taxing statute." *Hearings of the Subcommittee of the Committee of Appropriations of the House of Representatives, Treasury-Post Office Departments Appropriations for 1953, 82nd Cong., 2nd Sess., Wed., Jan. 23, 1952, pp. 424, 426, 427.*

"In other words, as I said before the Finance Committee, I do not believe people are going to continue to come in voluntarily and pay this $50 tax, when it is merely paying for the privilege of having your name turned over to the chief of police. * * *

It places this responsibility on the internal revenue service which it has never had before. We have to go out and prove that some individual is in a certain line of business. If he is not in that line of business he is not liable for the tax. That becomes criminal investigative work and requires the employment of a criminal type investigator. * * *

It may be that the law was intended to eliminate gambling in this country. If such is the case I cannot consider it, and never considered it, a true revenue measure." *Hearings before the Subcommittee of the Committee on Appropriations, U. S. Senate, Treasury-Post Office Departments Appropriations for 1953, 82nd Cong. 2nd Session, pp. 444, 445, Tues., Feb. 26, 1952.*

Commissioner Dunlap also told the Senate and House Appropriations Committee that he expected the additional cost of collection to be $20,686,591, and as of the time of his testimony his department had collected only $583,125 (*Hearings, supra, House,* p. 423, *Senate,* p. 443). He went on to testify that if lucky, the return would barely cover costs—a dollar for a dollar, rather than the $38 for $1 you get in the case of an internal revenue agent (*Hearings, House,* p. 426, *Senate,* p. 445).

The Special Committee to Investigate Organized Crime in Interstate Commerce, unlike the Finance Committee, did not recommend this wagering statute. On the contrary, they vigorously opposed it (S. Rep. No. 725, 82nd Cong., 1st Sess., pp. 9, 93):

> "The Internal Revenue Code has been analyzed with a view to tightening controls over organized crime through the Federal taxing powers. The Committee is not persuaded that the direct imposition of taxes, as exemplified by the Harrison Narcotics Act, is a suitable general device for curbing illegal activities, and for this reason, it has rejected numerous proposals to impose direct, confiscatory taxes on various types of organized criminal enterprises. There is force in the argument that recognizing gangsters and hoodlums directly for tax purposes tends to compromise the dignity of the federal Government and to complicate local enforcement problems. Moreover, the direct, confiscatory tax might be subject to grave questions on constitutional grounds (see U. S. v. Constantine, 296 U. S. 297, 1935)."

The Crime Committee was more familiar with the problem of tax evasion by those engaged in illegal enterprises than

the Senate Finance Committee. Yet their recommendations were utterly disregarded. Senator Kefauver stated during the Senate debate (97 Cong Rec 12362):

> "Mr. President, if the tax, which is proposed in the bill, remains in the measure, and apparently it will, it applies only to bookies, lotteries and number runners. It does not apply to casinos, to roulette wheels, dice games and all the other vicious forms of gambling. So the only thing such people are going to do is get out of gambling and into other activities to which the law does not apply. Unless we can prevent them from charging off their expenses of operation, their good will and many other items they have been getting by with, and cheating the United States Government out of millions of dollars, the Government will lose a great deal of revenue and be defrauded by commercialized gambling, which is going to be on the increase in the line of casinos, roulette games, crap games and all such things which are not taxed by the pending bill."

The Senate debate reveals that Senator Kefauver had correctly prophecized when he stated that the effect of this statute will be to drive people who are engaged in the business of making wagers as defined under the statute underground (Appellee's Br. 47A-57A). If revenue was the purpose of this wagering statute, substantial revenue could have been obtained from wagers placed in parimutuel enterprises which are licensed under state law and wagering games carried on in gambling casinos or other similar establishments.[8] But they were not taxed. The Senate Re-

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[8] "The experience of other countries where the method of collection is either by means of the totalizator or the pari-mutuel indicates that taxation in this form will yield a satisfactory return." Ency. Britanica, Vol. 3 (1950) at page 486.

port gave reasons (S. Rep. 781, 82nd Cong., 1st Sess., p. 116). The reason for not taxing the wagers place in parimutuel wagering enterprises licensed under state law was:

> "Such wagering is presently subject to state and, in some instances, local taxation and to superimpose a federal tax upon these transactions would only serve to maintain the existing advantage which bookmakers enjoy over pari-mutuel betting by reason of their immunity from pari-mutuel taxes."

This is an admission that the purpose of the Act was not to obtain revenue but to eliminate the alleged existing advantages that bookmakers enjoy over licensed operators—by eliminating bookmakers—through taxing and exposing them to prosecution by local authorities.

Parimutuel wagering enterprises were very profitable in the years before this wagering statute was passed and since November 1, 1951 these enterprises have had astounding increases (Appellant's Br. 40A-45A). See also the American Racing Manual (1952). The reason given by the Committee offends common sense.

> "Common understanding and experience are the touchstones for the interpretation of revenue laws." Helvering v. Horst, 311 U. S. 112, 118 (1940).

One of the reasons stated in the above Senate Report (page 115) for not taxing the type of wagers carried on in gambling casinos was:

> "However, the method of taxation provided, while particularly appropriate to bookmakers and to policy operators, does not appear readily adaptable to these other forms of gambling. For example, there are obvious practical difficulties in ascertaining the gross amount of wagers made in the course of a dice game and other games in which there is direct and continuous player participation."

But the Special Committee to Investigate Organized Crime in Interstate Commerce in its Third Interim Report (82nd Congress, 1st Sess. S. Rep. 307, p. 11) had recommended that:

> "*VI. Gambling casinos should be required to maintain daily records of money won and lost to be filed with the Bureau of Internal Revenue.* They also should be required to maintain such additional records as shall be prescribed by the Bureau. Officials of the Bureau of Internal Revenue should have access to the premises of gambling casinos and to their books and records at all times. Where the casino is operating illegally, in addition to the aforementioned obligations, the operator of the casinos should be required to keep records of all bets and wagers.
>
> *The cash returns from gambling casinos are fantastic in amount.* There is also, at the present time, no way in which the tax returns filed with the Bureau of Internal Revenue by the proprietors of these casinos can be adequately checked. The committee feels that one way of placing gambling casinos under control is to require them to keep daily returns to be filed with the Bureau of Internal Revenue and maintain prescribed books and records. These returns and the books and records should be checked frequently by visits from responsible revenue officials. Only through some such means can the Government obtain its proper share of the moneys which pass through the hands of proprietors of gambling casinos.
>
> In order to maintain even a closer check upon the operations of the illegal gambling casinos, the committee recommends that such casinos be compelled to keep a record of all wagering and betting transactions which

take place within its walls. They should also be subject to the obligation to maintain daily records for the Bureau of Internal Revenue and the obligation to permit inspection of premises and inspection of books and records at all times.

The committee is well aware that these provisions may well put illegal gambling casinos out of business."[9] (Italics supplied.)

In the House of Representatives the following pertinent statements were made during debate (97 Cong Rec 6891-6892):

"MR. DOUGHTON (Chairman of the House Ways and Means Committee) * * * Fourth. Gambling Taxes: A new tax is added in the bill on gambling, which applies mainly to bookmaking and numbering transactions. The rate is 10 per cent of the amount bet. There is also an occupational tax of $50 a year imposed upon a person liable to the tax and upon any person receiving bets for or on behalf of such person. The yield from this tax is estimated at around $400,000,000.

MR. DONDERO: Mr. Chairman, will the gentleman yield?

MR. DOUGHTON: I yield.

MR. DONDERO: I thought gambling was illegal in this country.

MR. DOUGHTON: Well I guess it is in most States. There are many illegal things that are taxed. Just because they are supposed to be illegal, would the gentleman be opposed to taxing them? If gamblers make money at gambling, does the gentleman think they

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[9] Yet similar provisions apply to those wagers that are taxable under the Act. But gambling casinos are legal in Nevada, hence were exempted under this Act.

should not pay an income tax on the money they win, the same as other people pay taxes on money they earn by doing a hard day's work?

MR. DONDERO: I am not arguing against it. I am raising the question whether the United States should enter into taking a tax from an illegal transaction.

MR. COOPER: Mr. Chairman, will the gentleman yield?

MR. DOUGHTON: I yield to the gentleman from Tennessee.

MR. COOPER. Of course, this is a tax on gross receipts from gambling. If the income comes from some illegal activity, it is taxable under the Federal income tax laws.

MR. DOUGHTON: It is estimated that this tax will yield about $400,000,000 annually. To that extent it will lighten the burden of other taxpayers. I hope no Member of this House will vote against this bill, but I am sure if he does he will not assign as a reason for voting against it the fact that we put a tax on gambling.

MR. HOFFMAN of Michigan: Mr. Chairman, will the gentleman yield?

MR. DOUGHTON: I yield.

MR. HOFFMAN: The gentleman from Tennessee (Mr. Cooper) made a statement about its being an income tax. Does it carry any implication that it is in any way a sort of license for those people engaging in those activities?

MR. COOPER: Mr. Chairman, will the gentleman yield?

MR. DOUGHTON: I yield.

MR. COOPER: Certainly there is no thought or intention to condone the activity in any sense.

MR. HOFFMAN of Michigan: But could it be so construed?

MR. COOPER: We certainly do not think so. We do not want it to be so construed. There is certainly no intention or thought of in any sense or in any way condoning the activity. But the fact remains that information received indicates that large sums of money are made through this type of activity, and we simply thought that an effort should be made to impose a tax on that type of activity.

MR. HOFFMAN of Michigan: Properly considered, then, it would be a sort of additional penalty on those unlawful activities, would it not?

MR. COOPER: If the gentleman will turn to page 55 of the Committee report he will find this statement:

'Proposals for a Federal tax on wagering are sometimes criticized as in effect sanctioning the carrying on of gambling activities in violation of such laws. Since its inception, the Federal income tax has applied without distinction to income from illegal as well as legal sources, and it has never been generally supposed that such application carried with it any implied authorization to carry on illegal activities.'

MR. HOFFMAN of Michigan: Then I will renew my observation that it might if properly construed be considered *an additional penalty on the illegal activities.*

MR. COOPER: *Certainly, and we might indulge the hope that the imposition of this type of tax would eliminate that kind of activity.*" (Italics supplied.)

During the debate in the Senate over the question of an amendment which would disallow business expenses incurred in illegal wagering, Senator George, Chairman of the Senate Finance Committee, stated (97 Cong Rec 12362):

"MR. GEORGE: Mr. President, this amendment is decidedly objectionable. What is the amendment? It deals with a tax on net income under section 23(a), a deduction under section 23(a), and the proposal is not to allow a deduction for a house or for a clerk or for the lawyer who drew the income tax return, if the earnings were illegal, or if they were realized in wagering transactions in violation of a State law, I believe, it is said in the provisions.

Mr. President, I think this is clearly an unconstitutional provision, regardless of who has given an opinion to the contrary, *because the tax is not on the net income, and it is not only inequitable but it is not legal to tax the gross income. Yesterday we voted to impose a tax of 10 percent upon the gross take or gross earnings or gross income, as an excise tax. Persons are taxed 10% now if they are engaged in an illegal transaction.* This amendment deals with a deduction under section 23(a) of the code, which relates entirely to deductions from the gross income in order to arrive at the net taxable income.

MR. KERR: Mr. President, will the Senator yield?

MR. GEORGE: I yield.

MR. KERR: Is not this amendment an attempt to impose a penalty for a wrongful act, rather than in the spirit of a tax on net income?

MR. GEORGE: The Senator is entirely correct, and under the decisions of the Supreme Court it does not make any difference who says the contrary. *If the real purpose is to punish an offense, it does not make any difference how it is to be done, it is unconstitutional,* and that applies to this amendment. This amendment would prohibit a deduction from gross income in computing net income by saying 'You engage in some sort

of illegal transaction, and we will not allow you deductions for necessary expenses incurred by you in making that income.'

Mr. President, yesterday I submitted to the Senator from Tennessee, as the RECORD will show, when his first amendment was offered, the plain question whether or not he was offering all of these several amendments as a substitute for the committee amendment, and the answer was in the affirmative. Now the Senators are offering a series of amendments again.

Mr. President, these questions are matters to be decided by the Senators themselves, but so far as I am concerned, this proposal is clearly unconstitutional. *Its main function is to punish a wrongdoer, and that being so, it cannot be sustained as a revenue provision.* I therefore am opposed to it." (Italics supplied.)

Senator George again stated (Cong Rec 12367-12368):

"MR. GEORGE: Yes; I think so, I think the man in the street has a great deal more sense than we give him credit for having.

I want to say one word about the license tax. The Senator calls it a license tax for selling liquor. I was district attorney and I was district judge, and I served on the reviewing courts of my State, and I convicted not one but many men because I was able to go to the Bureau of Internal Revenue to find that John Smith or Bill Jones or Jack White had paid for a liquor license. It was formerly $25. It has gone up. It used to be $25 back in those days.

MR. HUNT: It still is.

MR. GEORGE: I thought it was more than $25. Everything else has gone up, and I thought it had.

MR. KERR: It is being raised in this bill.

MR. GEORGE: At any rate, I obtained that information from the Federal Government, and then the sheriff had to go and take the man into custody, when he had some other evidence that he was selling liquor. The fact that he had this license for which he paid the Federal Government was no defense to him whatever, but on the contrary rather hurt his case."

Senator Kerr during the date observed (97 Cong Rec 12236-12237):

"MR. KERR: * * * If the local official does not want to enforce the law and no one catches him winking at the law, he may keep on winking at it, *but when the Federal Government identifies a law violator and the local newspaper gets hold* of it and the local church organizations get hold of it and the people who do want the law enforced get hold of it, they say, 'Mr. Sheriff, what about it? We understand that there is a place down here licensed to sell liquor.' He says, 'Is that so? *I will put him out of business.*' The people say, 'We understand there are slot machines operating, and there is a record of where they are.' The people who want the law enforced can put pressure on the local officials.

But if on the other hand, there is no such information available to the general public, if the local official wants to wink at the violation of the law, he does so, and it is not a situation about which the general public knows. The Senator is aware, as I am, that many a local official has been run out of office and defeated for re-election because the people themselves knew that the local law was being violated and that the official in office was winking at it. When that happens the good people will run that official out of office." (Italics supplied.)

It is well known that various state statutes[10] provide for outlawing gambling houses, penalizing the professional gambler or his employees, prohibiting the possession of various types of apparatus or devices used for the purpose of gambling, placing criminal responsibility upon individuals, such as the owners or agents of houses where gambling occurs, preventing public utilities from supplying their services to persons engaged in gambling, provide for the seizure and destruction of various gambling devices as well as the disposition of seized monies, which are the proceeds of gambling, even declaring gambling or wagering contracts to be void and unenforceable in the courts.

Only by shutting one's eyes to realities is it conceivable that under such circumstances would it be possible to openly conduct the type of illegal business here sought to be penalized even if one complied with the requirements of this Wagering Act.

Certain cases have been cited by Appellant in which tax and registration provisions under other statutes have been held valid in an attempt to persuade this Court to uphold the tax and registration provisions of the Wagering Act. All are clearly distinguishable:

In *Sonzinsky v. United States*, 300 U. S. 506, 512 (1937), this Court stated:

> "The case is not one where the statute contains regulatory provisions related to a purported tax in such a way as has enabled this Court to say in other cases that the latter is a penalty resorted to as a means of enforcing the regulations. See Child Labor Tax Cases (Bailey v. Drexel Furniture Co.), 259 U. S. 20, 35, 66 L. ed. 818, 819, 42 S. Ct. 449, 21 A. L. R. 1432; Hill v. Wallace, 259

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[10] The Law of Gambling by Morris Ploscowe—The Annals, May 1950.

U. S. 44, 66 L. ed. 822, 42 S. Ct. 453; Carter v. Carter Coal Co., 298 U. S. 238, 80 L. ed. 1160, 56 S. Ct. 855. Nor is the subject of the tax described or treated as criminal by the taxing statute. Compare United States v. Constantine, 296 U. S. 287, 80 L. ed. 233, 56 S. Ct. 223. Here Sec. 2 contains no regulation other than the mere registration provisions, which are obviously supportable as in aid of a revenue purpose. On its face it is only a taxing measure, and we are asked to say that the tax, by virtue of its deterrent effect on the activities taxed, operates as a regulation which is beyond the congressional power."

The statute in the Sonzinsky case was entitled:

"An act to provide for the taxation of manufacturers, importers, and dealers in certain firearms and machine guns, to tax the sale or other disposal of such weapons, and to restrict importation and *regulate interstate transportation thereof.*" (Italics supplied.)

Section 2 of the Act required that every importer, manufacturer, and dealer in firearms as defined by the Act shall register with the Collector of Internal Revenue for each district in which such business is to be carried on and shall pay a special annual tax at specified rates. The sole question presented was the constitutional validity of Section 2. The defendant was a dealer in firearms as defined by the Act and he had been convicted for failing to register and pay the annual tax of $200.

This statute did not exempt dealers from registration and taxation if licensed by the State. Dealers were not exempt from taxation and registration if the sales were "friendly." There was no provision requiring all employees to register

and each to pay the special tax and a 10% tax on gross receipts. The registration provisions were obviously an aid in the collection of revenue.

In the Brief for the United States filed in the Sonzinsky case by the Solicitor General, now Justice of this Court, the Constantine case was thus cited (page 15):

> "*United States v. Constantine*, 296 U. S. 287, involved a tax of $1,000 on the business of retail liquor dealers who operated in violation of the law of the States where the business was conducted. In view of the fact that the commission of a crime under State law was a condition to the imposition of the tax, this Court concluded that the tax was in fact a cumulative penalty for violation of State law, and, as such, beyond the power of the Federal Government."

In *United States v. Doremus*, 249 U. S. 86, 93 (1919), the Court, in discussing whether the provisions in question had any relation to the raising of revenue, stated:

> "Considered of themselves we think they tend to keep the traffic aboveboard, and subject to inspection by those authorized to collect a revenue. They tend to diminish the opportunity of unauthorized persons who obtain drugs and sell them clandestinely without paying the tax imposed by federal law."

Under the Harrison Narcotics Act, there was no exemption from registration and taxation if licensed by the State. There was no exemption from registration and taxation because one gave narcotics away on a "friendly" basis. There was no provision requiring all employees to register and each to pay the special tax. There was no 10% tax on the gross receipts of the business. In fact the case did not in-

volve at all the validity of the tax levy or registration—Doremus, a physician, had registered and paid the tax—but only whether the regulation requiring dealers not to distribute certain drugs except on certain forms had any reasonable relation to the collection of the tax imposed. Obviously the regulation had a rational foundation since without such sanction, dealers in narcotics could distribute the drugs to unauthorized persons. The provisions thus aided the collection of revenue. And such regulations were not in substance, police regulations, designed upon compliance to make it impossible for physicians to dispense drugs.

In *McCray v. United States*, 195 U. S. 27, 59 (1904), the taxing power was employed to obtain revenue from the sale of colored oleomargarine. Congress had passed a statute, the effect of which was to levy a tax on oleomargarine, free from artificial coloration that would make it look like butter, at the rate of a quarter of a cent a pound, and on oleomargarine, artificially colored to look like butter, a tax of ten cents per pound. The oleomargarine makers contended that the statute was not intended to raise revenue but was intended to prevent the sale of artificially colored oleomargarine and that on that account this Court should hold that the statute was beyond the power of Congress. This contention, of course, involved going beyond what appeared on the face of this statute. But *even going outside of the statute*, the oleomargarine makers never established in any way that this tax was prohibitive and regulatory. This Court stated:

> "Undoubtedly, in determining whether a particular act is within a granted power, its scope and effect is to be considered. Applying this rule to the acts of sale it is self-evident that on their face they levy an excise tax."

There was no exemption from tax if licensed by the State to sell oleomargarine colored to resemble butter. There was no 10% tax on the gross income of the business. Employees did not have to register and pay a tax and it was legally possible to operate the business in the various states. In fact, the oleomargarine business expanded and the Act was repealed.

In *United States v. Sanchez*, 340 U. S. 42 (1950), involving a *civil suit* for money due under the Marihuana Tax Act, Justice Clark, speaking for this Court, pointed out that the tax there levied was not conditioned upon the commission of a crime. In reaching its decision, the Court referred by way of comparison not *contra* to *Lipke v. Lederer*, 259 U. S. 557 (1922) and *Tovar v. Jarecki*, 173 Fed. 2d 449 (C. A. 7th Cir. 1949).

Compare *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381 in which Justice Douglas, speaking for the Court, stated:

> "Clearly this tax is not designed merely for revenue purposes. In purpose and effect it is primarily a sanction to enforce the regulatory provisions of the Act. But that does not mean that the statute is invalid and the tax unenforceable. Congress may impose penalties in aid of the exercise of any of its enumerated powers. The power of taxation, granted to Congress by the Constitution, may be utilized as a sanction for the exercise of another power which is granted it. Head Money Cases (Edye vs. Robertson), 112 U. S. 580, 596, 28 L. ed. 798, 803, 5 S. Ct. 247. And see Sonzinsky v. United States, 300 U. S. 506, 81 L. ed. 772, 57 S. Ct. 554. It is so utilized here.
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> The regulatory provisions are clearly within the power of Congress under the commerce clause of the

constitution. These provisions are applicable only to sales or transactions in, or directly or intimately, affecting, interstate commerce. The fixing of prices, the prescription of unfair trade practices, the establishment of marketing rules respecting such sales of bituminous coal constitute regulations within the competence of Congress under the commerce clause."

But the wagering statute rests on no other power but that under Article I, Section 8, clause 1 of the Constitution. The Doremus and Sanchez decisions could have been sustained on the Treaty Power, 38 Stat. 1929, 1932 (1912), see Missouri v. Holland, 252 U. S. 416 (1920); the Sonzinsky and McCray decisions on the federal commerce power. See present oleomargarine statute, 64 Stat. 20 (1950), 21 U. S. C. 347.

It also appears from the decisions in this Court that a high excise on a deleterious commodity or article dangerous to life and health affords less basis for an inference that the act intends a prohibition than does a heavy impost on a mode of doing business. *In the Child Labor Tax Case*, 259 U. S. 20 at 36, this Court stated:

"Does this law impose a tax with only that incidental restraint and regulation which a tax must inevitably involve? Or does it regulate by the use of the so-called tax as a penalty? If a tax it is clearly an excise. If it were an excise on a commodity or another thing of value we might not be permitted, under previous decisions of this court, to infer, solely from its heavy burden, that the Act intends a prohibition instead of a tax. But this Act does more."

This statute is an unwarranted extension of federal responsibility for local criminal matters. Such extension, even

when essential to national ends and plainly authorized by the federal constitution involves great dangers of glutting the national tribunal with petty prosecutions, sapping the vitality of local government and undermining the constitutional rights of the accused. Professor Schwartz of the University of Pennsylvania has reviewed these dangers in an article on "Federal Criminal Jurisdiction and Prosecutor's Discretion," 12 L. and Contemp. Prob., p. 64 (1948).

If Congress chooses to incur such risks in the exercise of one of the constitutional powers, e. g. over interstate commerce, conferred upon the national government for the purpose of enabling it to deal with problems beyond the reach of the states, we should have only a problem of policy; but here, the very fact that Congress resorted to the tax power reveals the lack of genuine federal concern.

There is a general presumption in favor of constitutionality of all Acts of Congress. But such a presumption is no more conclusive than a presumption of fact, of which the Court said in *Lincoln v. French*, 105 U. S. 614, 617 (1882):

> "Presumptions are indulged to supply the place of facts; they are never allowed against ascertained and established facts. When these appear, presumptions disappear."

This Court has stated that certain rights occupy a preferred position in our society.[11] Surely the right to engage in an occupation should occupy a similar position. And where a showing is made that a statute imposes confiscatory taxes, detailed obnoxious regulatory and self-incriminatory provisions designed if complied with to prevent the operation of the business, and in the same statute there are

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[11] See **United States v. Carolene Products Co.**, 304 U. S. 144, 151, Footnote 4 (1938).

exemptions from registration and taxation of similar types of business simply because they are legal under State Law, the usual presumption of the constitutionality of such legislation must disappear.[12] Grant the validity of this Act and it would allow the Government to regulate and control through the medium of the tax power the life and liberty of every citizen. We shall then have a Police State instead of the United States of America.

II.

The Statute is unconstitutional because it violates the Due Process and Self-Incrimination clauses of the Fifth Amendment.

Appellee had presented to the court below, in addition to his motion to dismiss, briefs setting forth various reasons[13] why the statute was unconstitutional (R. 3). Some of the reasons the court below rejected (R. 4).

Although rejected by the court below, this court may now consider them. In *United States v. Curtis-Wright Corp.*, 299 U. S. 304, 329 (1936), this court stated:

> "The government contends that upon an appeal by the United States under the Criminal Appeals Act from a decision holding an indictment bad, the jurisdiction

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[12] Note, The Presumption of Constitutionality Reconsidered, 36 Col. L. Rev. 283 (1936): "Moreover, the direct confiscatory tax might be subject to grave questions on constitutional grounds. (See U. S. v. Constantine, 296 U. S. 287, 1935.)" S. Rep. No. 725, 82nd Cong. 1st Sess., pp. 9, 93.

[13] The reasons assigned in the Briefs filed in the lower court were: 1. The statute is vague and indefinite. 2. The statute violates the Due Process clause of the Fifth Amendment. 3. The statute imposes a penalty, not a tax. 4. The statute violates the Self-Incrimination clause of the Fifth Amendment.

of the court does not extend to questions decided in favor of the United States, but that such questions may only be reviewed in the usual way after conviction. We find nothing in the words of the statute or in its purposes which justifies this conclusion. The demurrer in the present case challenges the validity of the statute upon three separate and distinct grounds. If the court below had sustained the demurrer without more, an appeal by the government necessarily would have brought here for our determination all of these grounds, since in that case the record would not have disclosed whether the court considered the statute invalid upon one particular ground or upon all of the grounds alleged. The judgment of the lower court is that the statute is invalid. Having held that this judgment cannot be sustained upon the particular ground which that court assigned, it is now open to this court to inquire whether or not the judgment can be sustained upon the rejected grounds which also challenge the validity of the statute and, therefore, constitute a proper subject of review by this court under the Criminal Appeals Act. United States v. Hastings, 296 U. S. 188, 192, 80 L. ed. 148, 150, 56 S. Ct. 218.

In Langnes v. Green, 282 U. S. 531, 75 L. ed. 520, 51 S. Ct. 243, where the decree of a district court had been assailed upon two grounds and the circuit court of appeals had sustained the attack upon one of such grounds only, we held that a respondent in certiorari might nevertheless urge in this court in support of the decree the ground which the intermediate appellate court had rejected. That principle is applicable here."

A. The statute violates the due process clause of the fifth amendment in that it is vague and indefinite.

Under the Act a special tax of $50 per year is paid by each person liable for taxable wagers or who is engaged in receiving wagers for or on behalf of any person so liable. By regulation (26 C. F. R. 325.21(b)) one who made a "friendly" type of wager,[14] that is a wager by one not in the practice of making wagers, was excluded from tax and registration. "The purpose of this requirement is to exclude from tax the purely 'social' or 'friendly' type of bet" (S. Rep. No. 781, 82d Cong., 1st Sess., p. 114). Furthermore, in defining the term "lottery" (Sec. 3285(b) 2), the statute states that "The term does not include (A) any game of a type in which '*usually*' (emphasis supplied) * * *"

It is submitted that such distinctions in statutes which penalize conduct with criminal sanctions are so vague and indefinite as to be a violation of due process of law. Obviously all wagers, friendly or business, are made for profit and there would not be a definite guide for conduct according to the actualities of life to define a criminal offense because the act is done in a business rather than in a friendly way or because one engages in a type of game in which one "usually" does something. This imposes upon the individual the duty of guessing as to the propriety of his conduct. Many individuals bet on football and baseball games. Many bet on elections. The federal courts would have to decide whether they were engaged in the business of making wagers by first determining whether such conduct was considered wagering. There might be as many different inter-

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[14] For a typical example of a friendly non-taxable wager see (Appellee's Br. 26A).

pretations as there are courts. In *Connally v. General Construction Co.*, 269 U. S. 385, 391 (1926), this Court stated:

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well recognized requirement, consonant alike, with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. * * *"

Of greatest importance is the significance which this Court has attached to the existence of the requirement of scienter. *United States v. Ragen*, 314 U. S. 513 (1942); *Herndon v. Lowry*, 301 U. S. 242 (1937). The information here charges that Appellee has willfully failed to pay the special occupation tax and that he has willfully failed to register but it was not essential under Section 3294 (a), (b) of the Act that this be willful to constitute a crime. Here, as in *International Harvester Co. v. Kentucky*, 234 U. S. 216, 223 (1914), "The elements necessary to determine the imaginary ideal are uncertain."

Appellant may challenge the validity of the Act since it is applied to his own disadvantage.

B. The statute violates the due process clause in that it is confiscatory.

Chief Justice Marshall once declared:

"The power to tax involves the power to destroy," *McCulloch v. Maryland*, 4 Wheat. (U. S.) 316, 431. It has also been stated, "The power to tax is not the power to destroy while this court sits," Justice Holmes dissenting in *Panhandle Oil Co. v. Mississippi*, 277 U. S. 218, 223 (1928).

The special tax of $50 per year to be paid by each person who is liable for the tax on the Sub-Chapter A may not by itself be confiscatory, but the excise tax imposed on their wagers equal to 10 per centum of the amount thereof is plainly confiscatory.

In *McCray v. United States*, 195 U. S. 27, 64 (1904), this Court said that if a case were presented where the abuse of the tax power was so extreme that it was "plain to the judicial mind that the power had been called into play not for revenue but solely for the purpose of destroying rights, freedom and justice upon which the Constitution was based that it would be the duty of the court to say that such an arbitrary act was not merely abuse of delegated power but was the exercise of authority not conferred."

This is such a case.[15]

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[15] The Special Committee to Investigate Organized Crime in Interstate Commerce stated: "* * * the direct, confiscatory tax might be subject to grave questions on constitutional grounds. (See United States v. Constantine, 296 U. S. 287 (1935).)" S. Rep. No. 725, 82nd Cong. 1st Sess., p. 93.

C. The statute violates the fifth amendment in that it is arbitrary and discriminatory.

In *Heiner v. Donnan*, 285 U. S. 312, 326 (1932), this Court declared:

> "That a federal statute passed under the taxing power may be so arbitrary and capricious as to cause it to fall before the Due Process of law clause of the Fifth Amendment is settled."

The Wagering Act arbitrarily discriminates against persons who make it their business to make wagers by taxing both them and their wagers and causing them to register but excluding from tax and registration those who make wagers but do not make it their business (Appellee's Br. 3, 4, 7). The Act discriminates against persons who are engaged in wagering that is illegal in the States by taxing them and their wagers and causing them to register but excluding from tax and registration those persons engaged in wagering which are legal in the States.

The sole basis for the selection of the class to be regulated is that the members of the class are engaged in activity made illegal by State law. But this basis rests on an invalid and arbitrary discrimination in subject matter. *United States v. Constantine*, 296 U. S. 287; *Smith v. Cahoon*, 283 U. S. 553 (1931).

D. The statute violates the self-incrimination clause of the fifth amendment.

The Government filed the information on March 17, 1952 charging in Count I that the Appellee did, on or about No-

vember 26, 1951, engage in the business of accepting wagers and did accept wagers and has willfully failed to pay the special occupational tax and in Count II that Appellee did engage in the business of accepting wagers and did accept wagers and has willfully failed to register for the special occupational tax.

The Appellee having engaged in the business of accepting wagers on or about November 26, 1951 was liable criminally for failure to pay the 10% tax due on these wagers, for failure to keep a daily record of the gross amount received (26 U. S. C. 3287); for failure to post or exhibit the stamp (26 U. S. C. 3294(b)); and for "any act which makes him liable for special tax." (26 U. S. C. 3294(a)).

Requiring Appellee to register and furnish information that could lead to the discovery of the above crimes and making his refusal to give this self-incriminatory information punishable by criminal sanctions is a violation of the Fifth Amendment.

If this were a criminal proceeding against the Appellee for any of the above offenses due, the Government could not compel him to supply the facts required by Form 11-C. These facts concern past as well as future conduct and are different from the type of records required under Regulation 26 CFR 325.32 pertaining to the Wagering Act.

Furthermore, the Appellee was required to furnish information called for on the return as a condition to the issuance of the special tax stamp (without which it was unlawful to operate) that would clearly incriminate him and his employees under the laws of the state where the business was conducted.

In *Boyd v. United States*, 116 U. S. 616, 631, 632 (1886), the Court said that:

> "* * * any compulsory discovery by extorting the party's oath * * * is contrary to the principles of a free

government. It is abhorent * * * to the instincts of an American. It may suit the purposes of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom."

It is our contention that the Fifth Amendment also forbids such a compulsory disclosure under the circumstances of this case.[16]

In *United States v. Saline Bank of Virginia*, 1 Pet. 100, 104 (U. S. 1828), Chief Justice Marshall declared:

"It is apparent, that in every step of the suit, the facts required to be discovered in support of this suit, would expose the parties to danger. The rule clearly is that a party is not bound to make any discovery which would expose him to penalties and this case falls within it."

Then in *Brown v. Walker*, 161 U. S. 591, 608 (1896), the defendant had refused to testify regarding certain freight rates although offered immunity under an Act of 1893 because he could not obtain immunity against future prosecution in the State courts. This Court stated:

"But even granting that there was still a bare possibility that by his disclosure he might be subjected to the criminal laws of some other sovereignty, that, as Chief Justice Cockburn said in Reg. v. Boyes, 1 Best & S. 311, in reply to the argument that the witness was not protected by his pardon against an impeachment by the House of Commons, is not a real and probable danger, with reference to the ordinary courts, but 'a danger of an imaginary and unsubstantial character,

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[16] Borden, The Effect of Dual Sovereignty on the Privilege Against Self-Incrimination, 26 Temple L. Q. 64 (1952).

having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct.'"

The English case of *Reg. v. Boyes*, cited in *United States v. Murdock*, 284 U. S. 141 (1931), (together with *King of the Two Sicilies v. Wilcox*, 7 State Trials N. S. 1050, 1068 (1850)) was decided on the ground that the danger of impairment was no more than a remote possibility. The *Wilcox* case rested on the ground that no English judge can know as a matter of law what would be penal in a foreign court.

However, in *Hale v. Henkle*, 201 U. S. 43, 69 (1906), this Court declared:

> "The question has been fully considered in England and the conclusion reached that the only danger to be considered is one arising within the same jurisdiction and under the same sovereignty."

But in *United States v. McRae*, L. R. 3 Ch. App. 79 (1867), the Court distinguished the *Wilcox* case stating that there was nothing on the face of the proceedings in the *Wilcox* case to indicate what the foreign law was applicable to the case or even whether "the defendant had incurred any penalty or forfeiture by acting in this country as the agents of the revolutionary government in Sicily * * *. It is a case entirely distinguishable from King of the Two Sicilies v. Wilcox * * *. There it was not shown that the defendants had rendered themselves liable to criminal prosecution."

In *Ballmann v. Fagin*, 200 U. S. 186, 195, 196 (1906), Justice Holmes delivered the opinion of the Court:

> "Not impossibly Ballmann took this aspect of the matter for granted, as one which would be perceived by the court without his disagreeably emphasizing his own

fears. But he did call attention to another, less likely to be known. As we have said, he set forth that there were many proceedings on foot against him as party to a 'bucket shop,' and so subject to the criminal law of the state in which the grand jury was sitting. According to United States v. Saline Bank, 1 Pet. 100 7 L. ed. 69, he was exonerated from disclosures which would have exposed him to the penalties of the state law. See Jack v. Kansas (decided this term), 199 U. S. 372, ante, 234, 26 Sup. Ct. Rep. 73. One way or the other we are of opinion that Ballmann could not be required to produce his cash book if he set up that it would tend to criminate him."

But in *United States v. Murdock*, 284 U. S. 141, 149 (1931), Justice Butler, speaking for this Court, stated:

"The plea does not rest upon any claim that the inquiries were being made to discover evidence of crime against state law. Nothing of state concern was involved. The investigation was under federal law in respect of federal matters. The information sought was appropriate to enable the Bureau to ascertain whether appellee had in fact made deductible payments in each year as stated in his return, and also to determine the tax liability of the recipients. Investigations for federal purposes may not be prevented by matters depending upon state law. Const. art. 6, §2. The English rule of evidence against compulsory self-incrimination, on which historically that contained in the 5th Amendment rests, does not protect witnesses against disclosing offenses in violation of the laws of another country. Two Sicilies v. Wilcox, 7 State Tr. N. S. 1050, 1068; Reg. v. Boyes, 1 Best. & S. 311, 330, 121 Eng. Reprint, 730."

And then in *United States v. Murdock*, 290 U. S. 389, 396 (1933), Justice Roberts stated:

> "* * * Not until this Court pronounced judgment in United States v. Murdock, * * * had it been definitely settled that one under examination in a federal tribunal could not refuse to answer on account of probable incrimination under state law."

We submit that the danger to the Appellee if he answered the questions of Form 11-C was not "imaginary and unsubstantial" and that prosecution under State law would not be "so improbable that no reasonable man would suffer it to influence his conduct." It would be necessary to discover "evidence of crime against state law" in order to determine whether Appellee was engaged in the business of accepting wagers. To require, therefore, the Appellee to supply such information is to compel him to give evidence that could be used against him for violation of the state criminal laws pertaining to wagering[17] and the federal lottery laws.[18] Proof of payment of the stamp tax would be admissible in all courts as evidence that one was engaged in the business of wagering. (See annotations under 26 U. S. C. 3276, Note 9.)

The purpose of this registration is obviously not to obtain and protect revenue but to enable the various local authorities to have the assistance of the Federal government in apprehending bookmakers and those engaged in the lottery business.

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[17] 18 P. S. 4601, 4602, 4603, 4607 (Pa.).

[18] 18 U. S. C. 1301, 1302. This Court takes judicial notice of State statutes. Mills v. Green, 159 U. S. 651, 657 (1895).

Chief Justice Vinson in *Shapiro v. United States*, 335 U. S. 1, 32 (1948), declared:

> "It may be assumed at the outset that there are limits which the Government cannot constitutionally exceed in requiring the keeping of records which may be inspected by an administrative agency and may be used in prosecuting statutory violations committed by the record-keeper himself."

The taxing power here is solely used to augment the criminal laws of the various states. It compels Appellee to admit he is violating the gambling laws of the State.[19]

This information, unlike income tax returns, is open to public inspection, available to local prosecutors.[20] It is

[19] An admission of being engaged in such an unlawful enterprise might lead to evidence of other criminal violations. Hoffman v. United States, 341 U. S. 479 (1951); Greenberg v. United States, 343 U. S. 918 (1952); Singleton v. United States, 343 U. S. 944 (1952). See also United States v. Lombardo, 228 Fed. 98 (W. D. Wash. 1915). **Aff'd** on alternate ground, 241 U. S. 73 (1916).

[20] In the New York Herald Tribune, Sunday, Jan. 6, 1952, p. 1, cont'd on p. 20, the following statement appears:

"Plans for continued investigation into organized crime call for the United States Attorney in each district to invite heads of the Federal enforcement agencies to appear before the grand jury. In addition officials of state, county and municipal police departments and representatives of local crime commissions will be expected to testify.

In this way, the Justice Department hopes, the grand jurors will be furnished with the identity of the local underworld figures and background information on crime which should be of great value for general law enforcement.

Special Unit Set Up. A special rackets unit has been established in the criminal division of the Department of Justice under Assistant Attorney General James M. McInerney, chief of that division. Its task will be to co-ordinate the entire program on a permanent basis.

This unit will use information uncovered by grand jury proceedings to fill out the records of underworld characters originally compiled for the Kefauver committee. The unit will turn information concerning local criminal conditions over to state and local authorities for action, thus carrying out one of the important recommendations of the Kefauver committee."

compulsory self-incrimination. [21, 21a]

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[21] AN ORDINANCE MAKING IT UNLAWFUL FOR ANY PERSON TO POSSESS, WITHIN THE CORPORATE LIMITS OF THE CITY OF MOLINE, ILLINOIS, A FEDERAL WAGERING STAMP, ISSUED UNDER THE PROVISIONS OF THE FEDERAL REVENUE ACT OF 1951, AND PROVIDING PENALTIES THEREFOR.

WHEREAS, under the provisions of the 1951 Revenue Act enacted by the Congress of the United States a tax is imposed on wagering; and, in addition thereto, any person engaged in any way in wagering is required to pay a special Occupational Tax of $50.00 per year and register with the Collector of Internal Revenue and receive a stamp denoting the payment of such special tax, which he shall place and keep in his principal place of business, except that if he has no place of business he shall keep such stamp on his person; and

WHEREAS, the procurement and possession of such a stamp is indicative that the possessor of such a stamp intends to engage in wagering or gambling; and

WHEREAS, under the laws of the State of Illinois and the ordinances of the City of Moline it is unlawful for any person to engage in any form of wagering, even though he may have a Federal Wagering Stamp; and

WHEREAS, the possession of such a stamp gives no authority or license to violate the laws of Illinois or the ordinances of the City of Moline; and, in order to aid the enforcement of the ordinances of the City of Moline and the protection of the public peace and morals and police power of said City, it is deemed necessary to prohibit the possession of such stamps within the corporate limits of said City; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS:

Section 1. That it shall be unlawful for any person within the corporate limits of the City of Moline, Illinois, to possess a Federal Wagering Stamp issued under the provisions of the Revenue Act of 1951 enacted by the Congress of the United States.

Section 2. Any person violating the provisions of Section One (1) hereof shall be deemed guilty of a misdemeanor, punishable by a fine of not less than $25.00 nor more than $50.00 for each violation, and each day any person possesses, within the corporate limits, a Federal Wagering Stamp shall constitute a separate offense.

Section 3. This Ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

Passed: March 25, 1952 A.D.

[21a] WEDNESDAY, NOV. 19, 1952—THE MIAMI HERALD—1-D

LOTTERY KING FACES CHARGE OF CONSPIRACY.

Dave Marcus, 52-year-old lottery kingpin under indictment for bookmaking by the county grand jury, was named Tuesday in a Circuit court suit charging him with conspiracy to violate state gambling laws.

It was one of three suits filed by State Attorney Glenn C. Mincer citing purchase of federal gambling stamps as evidence of conspiracy to violate the law.

Other defendants named Tuesday by Mincer and Assistant State Attorney John D. Marsh are B. E. Brandt, 2425 NW 23rd Ave., and Enrique and Jose Renedo, 80 NW 20th St.

CONCLUSION.

It is therefore respectfully submitted that the judgment of the District Court should be affirmed.

JACOB KOSSMAN,
1325 Spruce Street,
Philadelphia 7, Penna.,
Counsel for Appellee.

December 1952.

The new suits brought to 16 the number filed by Mincer and Marsh in the last month against federal gambling stamp purchasers. In one of the suits, Circuit Judge Marshall C. Wiseheart upheld Mincer's right to file the conspiracy charges on basis of the federal stamp purchases. The defendant's attorney said he would appeal Wiseheart's ruling to the Florida Supreme Court.

Mincer said 19 of the suits would be filed.

Marcus, whose address was listed as 6181 SW 49th St., was indicted Nov. 3 by the grand jury on charges of setting up a lottery, bookmaking and conspiracy to violate the gambling laws. He was freed under $5,500 bond.

Appendix A

(Miscellaneous: Newspaper and Magazine Articles; Statistics.)

THE EVENING BULLETIN, PHILADELPHIA, WEDNESDAY, MAY 7, 1952, P. 16 (EDITORIAL).

"As it is expected that the decision of Judge Welsh in Federal District Court here will be appealed, the opinion of the higher Courts on the constitutionality of the gambling stamp tax is still to be obtained. The particular point here involved does not appear to have been passed on previously.

"The feature requiring gamblers to register for the purpose of purchasing a stamp and to make certain disclosures as to other persons is ruled unconstitutional as a police measure in the guise of a tax provision. The tax on gamblers' earnings is not affected.

"As a revenue provider the law has proved a flop. Four months' experience indicated that its yield over a whole year would be nine millions instead of the $400,000,000 some optimists had predicted.

"*Revenue was not the aim of the measure; but the desire to impose some check on an evil which the revelations before the Kefauver committee had shown to have nation-wide ramifications. Of course the information forced from the gambler* could not be used against him, but it *furnished valuable clues to the police* throughout the country as to the persons in the business. As the gambler and his employes and associates work in secret, the law tended to throw light into the crime underground. It was thus a headache and a serious embarrassment to the gamblers, as it was designed to be. The long-range workings of the measure have yet to be disclosed.

"With citation of an important preceding Supreme Court decision the measure is now held to be unconstitutional. Ultimate decision on the issue is of great importance." (Italics supplied.)

"The Tribune's attitude on gambling has been expressed so often and so clearly that no one will misread our motives in saying that we believe that federal District Judge Welsh in Philadelphia was right in declaring the $50 federal gambling licensing tax unconstitutional. The judge declared that the statute was a police measure enacted under the guise of a tax bill and that the principle, if extended, could prove extremely dangerous.

"Congress was certainly aware when it passed this legislation that it was not doing so to produce revenue, but to put the gamblers out of business. It may be held that the end justified the means, especially when crooked local authorities refuse to do their duty, but the principle is perilous because it can jeopardize the rights of citizens who are not of a disreputable character.

"'If the fundamental principles claimed by the federal government in this particular case were upheld by the highest judicial power,' said Judge Welsh, 'future acts of the government in a field not so free from improper motives would regulate our lives from the cradle to the grave. This remedy would be fare worse than the disease.'

"In requiring every gambler to obtain a license for himself and all of his agents, the law requires a man to be a witness against himself and an informer against others. This flies in the face of the constitutional right to refuse testimony that is self-incriminating, although the disingenuous explanation is offered that to confess to federal authorities a disposition to violate a state law is of no interest to federal authorities, enforcement being up to state officers.

"The effect, however, is to compel local authorities, however reluctant, to take action to limit the carrying on of gambling under the federal license, for the gamblers, their agents, and their place of operation are a matter of public

record. The law achieves its fullest effect by deterring the gamblers from seeking licenses or carrying on operations in the first place. It may be assumed that, although both gamblers and law enforcement authorities are put on the spot by the registration of licenses, there is still some collusion among politicians, police, and gamblers permitting gambling to operate.

"The suppression of gambling depends upon honesty in law enforcement. If the people want to outlaw gambling, their recourse is to get a set of local officials who will do so. It is dishonest to seek to achieve that result by indirection, particularly when, as Judge Welsh emphasizes, a similar resort to police measures disguised as tax legislation can be turned against all honest citizens."

TIME, NOVEMBER 12, 1951, p. 23.

* * * Experts estimated that the new tax, if paid, would bring in $400 million. From the way things looked last week, it might never bring in $4,000. But it had a far more profound effect, which may have been the real intention of Congress when it wrote the new law; the gambling business of the United States almost came to a standstill. A 10% tax on gross business was probably more than the traffic would bear. Even more discouraging was form 11-C.

THE NEW YORK TIMES, SUNDAY, MAY 11, 1952 (EDITORIAL).

"Last November 1 a Federal statute went into effect requiring professional gamblers to purchase a $50 tax stamp and pay a 10 per cent tax on their winnings. Congressional backers of the measure called it a revenue bill, and estimated it would bring in as much as $400,000,000 a year. Opponents called it simply a device to crack down on gambling, which is not a Federal offense. As a matter of fact, the Government has reported that 90 per cent of the nation's bookmakers have gone out of business rather than pay the taxes. By paying the taxes they would go on record as violators of state law, except in Nevada where gambling is legal * * *"

NATIONAL AFFAIRS, MAY 19, 1952, PP. 33, 34.

"Highpockets George leaned against a lamp post and watched the Times Square traffic go by. There was a pleased expression on his face. 'That old judge in Philly,' he said. 'He's sure putting the bookies back in business. All the boys are coming out of the woodwork. They ain't afraid of Uncle Syndicate no more.'

"The 'judge in Philly' was Federal Judge George A. Welsh. It was his decision last week which, at least temporarily, promised to break the back of the law requiring professional gamblers to register with the government, buy a $50 tax stamp which they were to carry about with them or post prominently in horse parlors and gambling houses, and pay a 10 per cent tax on their gross.

"The law, which had gone into effect last November, put a quietus on bookmaking, the numbers game, and other forms of gambling. In states where gambling was illegal, bookies complained that Uncle Syndicate's cut on the gross handle was so big that many bookies couldn't operate.

This, of course, was the intent of Congress. Though there had been some talk of raising $400,000,000 in added revenue, what Congress really wanted was to put the bookies and the policy boys out of business. It had succeeded admirably. Most bookies were too afraid to buck the Federal Government and had retired to honest labor and other onerous pursuits. In six months, the Treasury had collected less than $3,000,000 from the sale of stamps and the 10 per cent tax.

"Judge Welsh's decision came in unexpectedly—'like a 40-to-1 shot,' a bookie said. He ruled last Tuesday that the $50 tax was unconstitutional. It was a punitive police measure, disguised as a tax bill, Welsh said. And, he noted, it

forced a gambler to testify against himself—a violation of the Fifth Amendment.

"In some areas, the Welsh decision brought jubilation. In New York City, where bookies had once jostled each other in the Midtown section, scratch sheets, pads, and pencils began to emerge. In Los Angeles, bookmakers predicted that business would be better than ever. In New Orleans, a Federal and a local grand jury were holding hearings and police were jumpy. But gamblers thought the Philadelphia decision would eventually open things up.

"Elsewhere, gloom continued. In Florida, where the gambling take had dwindled from $120,000,000 to $1,500,000 a year, bookmakers saw no hope of relief from the state clampdown brought on by the Kefauver hearings. In Detroit and Chicago, the gambler's policy was one of watchful waiting.

"But most discouraging of all was the determination of Internal Revenue Commissioner John B. Dunlap to go right on collecting the gambling tax and imposing the tax stamp 'pending final adjudication.' And Government lawyers promised to carry the fight against Judge Welsh's ruling right up to the Supreme Court."

NEWSWEEK, DECEMBER 12, 1951, P. 30.

* * * What really broke the bookmaker's morale was a clause in the law which provided that the $50 tax stamp be displayed prominently in the place of business, or carried on the person. Lists of the "registered" gamblers, moreover, would be open to public inspection. In areas where gambling is illegal, "public" means newspapers and cops.

* * * Fifteen bookies in Brooklyn piled into their tax consultant's office. He advised them to quit the business cold. "This will force a lot of them into crime," he said seriously. "Many haven't worked in 20 years and some not at all." Two Cleveland policy operators, grossing $1,000,000 a year, closed their door with an announcement that they could not afford $50 stamps for their 700 employees.

* * * Gambling is legal in Nevada, but the prohibitive cost of Federal regulation shut down most of the state's 24 books, forcing the bookies to apply for unemployment compensation. Horse, football, basketball, and baseball parlors in the lush Las Vegas resort hotels were bleak and dark.

* * * Offices of Internal Revenue Collectors waited patiently for the gamblers to line up for tax stamp applications. But business was slow. Of New York City's 10,000 bookmakers, only 200 picked up the forms—and most of them said they were acting "for a friend."

Even the few who were willing to acknowledge their business were fearful of catching the tax man's eye. The Revenue Bureau, however, wasn't going to wait for the shy ones to step forward. In regional offices, long lists of known gamblers were being compiled and the registration forms were being mailed out.

U. S. NEWS AND WORLD REPORT, NOVEMBER 16, 1951, PP. 43-45.

* * *

Both management and labor in the gambling business find themselves faced with jail terms if they register to pay the tax and severe penalties, including jail terms, if they fail to register and pay the tax. Fines can total as much as $25,000 for disregarding the law plus a fine equal to the amount of back tax owed. As a result, shutdowns are occurring all up and down the line and consternation reigns.

Big and little operators are affected alike. * * * Size is a handicap, if anything. No one appears safe. In San Francisco, for example, operators of Allied Lottery, a $100,000 business—have publicly quit. In New York, a "tremendous drop" in the number of gambling operators is reported. In Miami, 1,000 of the new tax forms were mailed out to known gamblers after no one asked for the forms, needed to stay in business without violating U. S. law. In Los Angeles, only 6 out of 10,000 known bookmakers applied for the tax stamp when the new law went into effect. Even in Nevada, where gambling is legal, 22 of the 24 State-licensed gambling operators shut down. Thousands of "bookies" have quit, at least temporarily.

* * *

Under the new law, as gamblers see it, there are four courses they can follow:

THEY CAN COMPLY with the law. But this would mean almost automatic arrest by local or state police as soon as the gamblers register, so only a handful who can afford high-priced protection or want to take a longshot chance plan to follow that course.

THEY CAN CLOSE UP and hope that a court test, already planned in a Washington, D. C. court, might knock out the new tax. Most gamblers are doing that, at least for the time being. The hope is that the law will be declared unconstitutional because it forces those who comply with it to incriminate themselves. Odds are, however, that the court fight will be long, the outcome doubtful.

THEY CAN GO UNDERGROUND much further and build up a system comparable to that of prohibition days, with lottery on a bootleg basis. This is certain to be tried, but the risks of tangling with Treasury officers is great and will grow greater as the number of such officers is expanded. Evidence of gambling, uncovered years later, will be enough to warrant a penitentiary term and penalties which could total up to $25,000 plus twice the amount of tax owed.

THEY CAN SHIFT OPERATIONS to card games, dice games, roulette, or other forms of gambling not covered by the new federal law. * * *

This shift to untaxed forms of gambling already has begun on a small scale * * * But the demand for this service is thought to be strictly limited.

* * *

Which course will be followed by most of the hard-hit gambling operators will depend largely on how effectively the new tax law is enforced, and how much cooperation is given by local police officials.

* * *

But even partial enforcement of the tax law will greatly increase the hazards and costs of trying to ignore it. In New York the Internal Revenue Bureau has assigned an agent to each of the five "gambler" courts and each time city police bring in a gambler he is served with a notice of failure to register. This alone can mean a $5,000 fine in addition to city penalties. Double penalties, in other words,

face each bookie or runner arrested by local police, as 12,361 were in New York the past year.

Full scale enforcement of the tax law, however, is to be tried. * * * Cost is estimated at about $34 millions, but fines collected are expected to cover this overhead even if the tax itself yields little revenue. This means that several hundred federal agents will operate in every large city, with dozens in each small city as well.

"The $2 horse bettor and the 10 cent numbers player became the victims of shortened pay-offs as the new Federal tax on professional gamblers went into effect last midnight.

"With many gamblers suspending operations to await developments, several local bookmakers reduced their pay-off limits from 50 to win, 20 for place and 10 for show, to 30, 12 and 10. The policy racketeers, meanwhile, sliced their pay-offs on the winning numbers from 700-to-1 to 400-to-1.

"About 200 application forms were picked up at Internal Revenue offices here yesterday. The forms, when filled out and accompanied by a $50 stamp tax, register the applicant as a professional gambler who must then pay to the Government 10 per cent of his gross income. Tax collectors said they had no way of telling how many of the forms sought to date would eventually be filed by gamblers and how many were just picked up for study or for curiosity.

"Bookmakers, policy operators and their employes have until the end of this month to make their first returns.

"Until yesterday, most bookmakers limited their pay-offs on longshots to 50-to-1 for winning horses. By reducing the odds, with a corresponding cut in place and show pay-offs, the bookmakers count on building up a kitty that may be used toward the new Federal tax or for graft to avoid the tax payments, whichever the bookmakers decide is the sounder investment.

"The Police Department announced that its legal department had set up a procedure for cooperation with the Federal Government on the next tax. When police make arrests on bookmaking or policy charges the police will notify the Federal authorities. They also will notify the Internal Revenue Bureau of the disposition of such cases. Convicted

professional gamblers will be subject to Federal penalties of five years in prison and $1,000 to $5,000 fines if they have not registered for the Federal tax.

"Even in Nevada, where gambling is legal under state law, bookmakers decided that the new 10 per cent bite would ruin their business. State-licensed bookmakers said it would be 'economically unsound' to remain in business. A group of bookmakers in Reno sought a way out of the dilemma by levying on the bettor a 10-cent tax for every dollar he put up.

"In Cleveland, two big policy operators, Buster Matthews and Joe Allen, announced their 'retirement' as of midnight. Matthews, who admitted grossing about $1,000,000 last year, said he could not afford to buy $50 stamps for each of his 700 employes, let alone pay the 10 per cent tax on his gross business. Kansas City authorities said they expected some employes of bookmakers to apply for unemployment compensation."

PHILADELPHIA DAILY NEWS, TUESDAY, NOVEMBER 27, 1951, P. 5.

"Don't be a bit surprised if your favorite bookmaker or numbers man tells you when next you bump into him that he's in a new racket now—bootlegging.

"The recently established Federal 10 percent tax on those who take bets for a living—and a handsome living it was, too—has resulted in 70 to 90 percent of the horse books in Philadelphia suspending operations, and the Daily News has information that many of them are starting up in the old business that flourished so profitably for the underworld during Prohibition.

" 'Why not?' the book asks. 'With these higher Federal taxes on booze, the guy with an average income just can't afford to pay for his Christmas supply at standard rates. This new Federal bite of 10 percent of the gross hurts me. So we get together, I fix him up with a quart of drinking whiskey at $3. He's happy and I'm making money again.'

"This newspaper has learned that more and more people are looking for liquor through illegal channels every day because of the tax-ridden prices of store and bar stocks. As the book said, the guy with a $50-a-week income and a family to support just can't dig down for whiskey at $4.50 a bottle.

"Come Saturday, the bookie will be breaking the law if he doesn't file a return of his receipts and take out that $50 occupation stamp. Yet so far not a single gambler has bothered to report his income or obtain a stamp at the Internal Revenue offices in Philadelphia.

"Reports indicate that the gamblers are not defying the new tax; they simply have suspended operations in the face of the current situation.

"In upstate Pennsylvania, they are out of business altogether in some towns. You can't get a bet down on the street. Over in New Jersey, however, there are some sections where the books still operate.

"The increase in bootlegging was noticed in New Jersey last week, where the Alcohol Tax Unit of the U. S. Government seized seven stills in one area. One place was so elaborately equipped it had a printshop for the printing of counterfeit tax stamps and brand labels.

"With Christmas rush on liquor buying, the erstwhile gambling men want to crowd into bootlegging fast to share in the juicy market for contraband. There are various outlets. One is the direct maker-to-consumer route. Then there are distributors who will handle it in bulk for a middle man's slice. Also, unscrupulous taproom dealers who don't mind substituting phony labels for the real thing.

"Why has the new 10 percent tax had the effect of forcing so many bookies to suspend operations?

"First of all, they say they stand to lose money through a 10 percent swipe at their gross revenue, plus the $50 feet to run. Bookies figure that their average profit runs anywhere from 15 to 18 percent of the take. Knock off 10 percent for the excise tax, plus overhead expenses, and they're in the red, they assert.

"Let's take an operator who runs a basketball pool. He gives a customer 3 to 2 odds of $75 to $50, on a certain team with allowance of 10 points. He also gives 3 to 2 on another team, $150 to $100, with eight points. The player wins the $75 bet, and the book wins $100 on the other wager. That leaves a profit of $25, but with a 10 percent tax on the total $150 the customer bet, the book is left with a measly $10 out of the whole amount the bettor turned over to him. That is not enough, the book complains.

"There is another reason why the gamblers are lying low. Samuel H. Rosenberg, public safety director, has made it known he'll turn over the names of any gambling suspects

to Federal authorities. Thus, the arrested bookie faces not only prosecution by the Commonwealth, but a Federal rap if he hasn't reported his earnings.

"For failing to pay the monthly tax, the punishment is five years in the clink and a $10,000 fine. For failing to take out the $50 stamp, there are fines of $1000 to $5000 and five years in jail.

"A survey by the United Press has shown that gamblers across the country are ignoring the invitation to go legal. Of 30 cities and states checked, including Philadelphia, total sales of stamps amounted to less than 100.

"In Chicago, where 400 books were thought to have flourished before November 1, only two stamps had been sold. One of these went to a Pullman porter who read about the new stamp law and decided the purchase of one would permit him to start in the gambling business.

"Only four of the stamps had been sold to date in New York City. Four more applications were being processed. Largest number of sales was reported in Kansas City, Mo., where 18 stamps were sold.

"A test case of the constitutionality of the law was under way in Washington, D. C. A three-judge tribunal will hear the case. Attorneys who filed it contend the law amounted to self-incrimination for applicants who answered the questions.

"Rep. John W. Byrnes (R.), Wisconsin, said even if the tax fails to raise the anticipated $407,000,000 in revenue, it has had the 'good effect' of driving many bookies out of business. He said the tax has not been in effect long enough to judge it fairly."

NEW YORK TIMES, WEDNESDAY, MAY 7, 1952, P. 37.

"Up to March 31, the law has brought into the Treasury $547,992.83 in stamp taxes and $2,248,327.47 in excise levies through the 10 per cent tax on a gambler's earnings.

"A total of 19,500 persons filed the special tax return and application for registry. During the first five months' operation of the law, 281 cases were referred to the Department of Justice for prosecution, of which thirty were closed with conviction ranging from a year and a day imprisonment to fines and probations."

THE WALL STREET JOURNAL, NEW YORK,
WEDNESDAY, MAY 7, 1952, P. 1.

"* * * The law has been a failure as a revenue producer but has driven a lot of bookies and gamblers under cover."

THE EVENING BULLETIN, PHILADELPHIA, TUESDAY, MAY 6, 1952, P. 32.

"* * * Government officials said the taxes had cut illegal gambling by 90 per cent in the United States. A Philadelphia survey showed that 70 per cent of the city's bookies had been driven out of business by the taxes."

NEW YORK JOURNAL AMERICAN, TUESDAY, MAY 6, 1952, P. 1.

"* * * Revenue officials have said the law is a failure as a money producing measure but has dealt gambling a terrific blow, closing many big time bookie operations."

THE EVENING BULLETIN, PHILADELPHIA, FRIDAY, MARCH 21, 1952.

ROCK ISLAND, ILL., MARCH 20—(AP).

"All 59 holders of federal gambling tax stamps in Rock Island county have turned them over to the county grand jury and asked that they be returned immediately to the Government for cancellation.

"State's Attorney Bernard J. Moran said the mass surrender of the stamps yesterday leaves the county with no gambling tax stamps.

"He declared the 59 persons were subpenaed to tell why they bought the stamps and whether they had used them for gambling operations."

THE EVENING BULLETIN, PHILADELPHIA, SATURDAY, AUGUST 23, 1952, P. 2.

"Washington, Aug. 23—The Bureau of Internal Revenue says the law Congress wrote last year to make gamblers pay taxes—a move designed both to put them out of business and to raise revenue—is just not working.

"Not much money has been collected in taxes, and gambling is still widespread, it said this week in a monthly activity report reviewing what has happened between the time the law went into effect last November and the end of fiscal year 1952 on June 30.

"The law provided that certain gamblers must register as such and buy a $50 occupation stamp each year, then pay a tax amounting to 10 per cent of their total take.

"The bureau said in its report:

> "When reviewed in the light of expectations of the legislators, the wagering tax provisions have failed to produce the desired results.
>
> "It appears that the tax yield in a full year of operations will be about eight million dollars, or two per cent of the original estimate of 400 millions. As a regulatory measure, the provisions may prove equally non-effective." "

THE PHILADELPHIA INQUIRER, WEDNESDAY, MAY 7, 1952, PP. 1, 2,

"* * * Government officials have claimed that the 'occupational wagering tax' had cut illegal gambling in the United States by 90 percent. A survey in this city showed that some 70 percent of the bookies had been driven out of business by the taxes.

"A total of 18,913 stamps have been sold nationally, the Internal Revenue Bureau reported. Since Nov. 1, the effective date of the law, $2,796,000 has been collected in stamp receipts and gambling tax levies."

LOS ANGELES TIMES. WEDNESDAY, MAY 7, 1952, P. 2.

"* * * Capt. James Hamilton of the police intelligence unit, said no unusual activity among gamblers as a result of the eastern ruling had come to his attention. He said regardless of the final outcome on the stamp provision, the 10% deduction itself (unaffected by the ruling) will be a severe deterrent to gamblers resuming operations."

ACCOUNTANT'S WEEKLY REPORT, JULY 21, 1952.
Vol. 10—No. 44.

Go East, Bookies, Go East: A Federal District Court in California holds that the occupational tax and registration requirements imposed on bookmakers and lottery operators *is* constitutional [E. L. Smith, USDC, S.D., Cal., 7/3/52]. In the Keystone State it *isn't* constitutional, at least for the time being [Kabriger, USDC, E.D., Pa., 5/6/52].

THE PHILADELPHIA EVENING BULLETIN,
OCTOBER 8, 1952.

$15 GETS MAYOR $10 BUT YANKEES HAD HIM WORRIED

Mayor Clark, an old ball player himself, bet $15 to $10 on the New York Yankees to beat the Brooklyn Dodgers in the World Series.

The mayor, who played in the outfield at Harvard, said today, now that the tension's over, that he won the bet from William Trotter Newbold, a metals broker.

"I was a little worried after the fifth game," he admitted. "But the Yanks came through."

Clark admitted that his average on picking winners was in need of improvement. He picked the Phillies and Cleveland to win the pennants.

"But I was smart enough not to bet on them," he said.

The mayor commented that he sees nothing wrong in little friendly wagers but is opposed to legalized gambling.

Form 7 (Firearms)
U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised November 1951)

APPLICATION FOR LICENSE
FEDERAL FIREARMS ACT

_____ (Date)

Name of applicant (print) _____

Trade name _____

Address _____
(Principal place of business) (City or town) (County) (State)

274

The undersigned hereby applies for a license under section 3 of the Federal Firearms Act to transport, ship, and receive firearms and ammunition in interstate and foreign commerce as _____ and states as follows:
(Manufacturer or dealer)

The applicant is not a fugitive from justice as defined in section 1 (7) of the Act and is not now under indictment for, and has never been convicted of, a crime of violence as defined in section 1 (6).

The applicant carries on business at the following additional post-office addresses:

_____ _____

_____ _____

(Any person *** who makes any statement in applying for the license *** provided for in this Act, knowing such statement to be false, shall, upon conviction thereof, be fined not more than $2,000, or imprisoned for not more than five years, or both. (Sec. 5, Federal Firearms Act).)

I declare that the above statements are true and correct.

	Dollars	Cents
[1] Cash		
[1] Check		
[1] Post office M. O.		

[1] Cross out form of payment NOT used. Make remittance payable to "Collector of Internal Revenue." Enter amount in above space.

(Signed) _____

_____
(State whether individual owner, member of firm, or if officer of corporation, give title)

16—50083-4

INSTRUCTIONS

1. The Federal Firearms Act approved June 30, 1938, as amended, provides that it shall be unlawful for any manufacturer or dealer, unless licensed under the Act, to transport, ship, or receive any firearm or ammunition in interstate or foreign commerce. Manufacturers and dealers desiring licenses may secure them by application to the collector of internal revenue for the district in which is located the applicant's principal place of business.

The term "manufacturer" means any person engaged in the manufacture or importation of firearms or ammunition for purposes of sale or distribution. The license fee for manufacture is $25 per annum.

The term "dealer" means any person engaged in the business of selling firearms or ammunition at wholesale or retail, or any person engaged in the business of repairing such firearms or of manufacturing or fitting special barrels, stocks, trigger mechanisms, or breech mechanisms to firearms. The license fee for dealers is $1 per annum.

The term "firearm" means (1) any weapon, by whatever name known, which is designed to expel a projectile or projectiles by action of an explosive; (2) any part or parts of such weapon; and (3) a firearm muffler or firearm silencer.

The term "ammunition" means only pistol and revolver ammunition. It does not include shotgun shells, metallic ammunition suitable for use only in rifles, or any .22 caliber rimfire ammunition.

The term "interstate or foreign commerce" means—

(a) Commerce between any State, Territory, or possession of the United States (not including the Canal Zone), or the District of Columbia, and any place outside thereof;

(b) Commerce between points within the same State, Territory, or possession of the United States (not including the Canal Zone), or the District of Columbia, but through any place outside thereof; or

(c) Commerce within any Territory or possession of the United States (including the Canal Zone), or the District of Columbia.

2. The application shall be properly signed by the applicant.

3. Penalties are provided for the transportation, shipment, or receipt of firearms or ammunition in interstate or foreign commerce by manufacturers and dealers not licensed under the Act.

4. Licenses are effective for a period of 1 year from the date of issuance. Applicants operating branch houses are required to secure one license only, but the application shall show the post-office address of each such branch.

5. The license fee should be remitted with the application. Make remittance payable to "Collector of Internal Revenue."

6. SPECIAL NOTICE.—The exportation or importation of any arms or ammunition caliber .22 or larger is subject to the requirement of a license issued by the Secretary of State. Application should be made to the Munitions Division, Department of State, prior to export or import.

U. S. GOVERNMENT PRINTING OFFICE 16—50083-4

Form 678 C—Revised Mar. 1939
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

APPLICATION FOR REGISTRY AND SPECIAL-TAX STAMP—MARIHUANA, ETC.

PRINT NAME AND ADDRESS PLAINLY BELOW

U. S. Registry No. _____ (To be assigned by Collector) for period from _____ to June 30, 19____

Name _____

Address _____

_____ (Number of stamp or stamps)

_____ (Date issued)

_____ (Entered on Record 9)

If firm or partnership, give below name and residence of each member; if corporation, give name, residence, and title of each officer

Name and title	Residence

Check class or classes covered by application

Class	Annual tax	Description of occupation (See instruction 4 on back)
1 ☐	$24	
2 ☐	$1	
3 ☐	$3	
4 ☐	$1	
5 ☐	$1	

State your last business or occupation previous to this application, giving address, or name and address of employer _____

_____ (Name of employer), _____ (Occupation), _____ (Address)

What is your State professional license or certificate number, if any _____ Date issued to you _____

What is you State store or business registration number, if any _____ Date issued to you _____

Application for registry and special-tax stamp is hereby made pursuant to sections 3230 and 3231, Internal Revenue Code, for the period indicated above to cover the business or businesses stated or practice engaged in and at the location specified.

I solemnly swear, or acknowledge, before two witnesses, that all of the above statements are true and correct.

Subscribed and sworn to before me this _____ day of _____, 19____

_____

_____

_____

(Official title, or signatures and addresses of witnesses and date of signing)

Received by Collector (date) _____

_____

(Signed) _____

_____

(State whether individual, owner, member of firm, or, if officer of corporation, give title)

REMIT TO COLLECTOR OF INTERNAL REVENUE AT _____ (To be filled in by Collector)

REMITTANCE ENCLOSED

Cash:		Certified Check:		Post Office Money Order:	

NOTE.—Payable only by Cash, Certified Check, or Post Office Money Order.

16—8816

INSTRUCTIONS

1. Indicate on this form, in the blocks provided for that purpose, each class in which business will be conducted.

2. Where a taxpayer proposes to engage in more than one business or profession, or at more than one place of business, special tax must be paid for each separate business or profession, for each location. (See note.)

3. If the amount of tax covered by the application is not in excess of $10, it may be signed or acknowledged before two witnesses instead of under oath.

4. The application must state the exact business or profession in which the applicant is engaged. For instance, an application for class 1 must state whether the applicant is an importer or manufacturer, or both, and in addition whether the activities for which registered will involve medicinal or nonmedicinal marihuana. An application for class 3 in addition to stating whether the activities will involve medicinal or nonmedicinal marihuana, should state whether sales will be made pursuant to order forms or whether pursuant to prescriptions only. An application for class 4 must state whether a physician (state parenthetically whether regular, homeopathic, eclectic, osteopathic, or chiropractic), dentist, or veterinary surgeon, etc. An application for class 5 must state whether a producer or user of marihuana for laboratory use.

5. Application must be signed by the person desiring registration. The application of a firm must be signed by a member; that of a corporation by an officer duly authorized to act. The names of the real owners must be disclosed, if the business is being carried on under an assumed or trade name or that of a former owner. If the application is that of a partnership, the name of each partner must appear. If the application is that of a corporation, the names of the principal officers must be shown. If the application is that of an institution, the head thereof or of the department wherein marihuana is used must sign the application for registration.

6. An original sworn inventory of marihuana or preparations coming within the purview of subchapter C, Marihuana, chapter 23, sections 2590–2604, Internal Revenue Code, in the possession of the applicant at the date given on this form must accompany this application, if made for class 3 registrants who do not render returns, or class 4 or 5, the duplicate inventory being retained for inspection by authorized officers. Use blank form 713 for inventory.

THIS APPLICATION MUST BE EXECUTED AND FORWARDED TO THE COLLECTOR OF INTERNAL REVENUE BEFORE COMMENCING BUSINESS. NO INCOMPLETE APPLICATION WILL BE ACCEPTED BY THE COLLECTOR.

The special taxes imposed are as follows:

Class 1 ($24 per annum).—Importers, manufacturers, and compounders (persons who import, manufacture, or compound marihuana and preparations).

Class 2 ($1 per annum or fraction thereof).—Producers (persons who produce, cultivate, plant, or harvest marihuana, except those included within class 5, as set out below).

Class 3 ($3 per annum).—Dealers (persons who sell or dispense marihuana and preparations).

Class 4 ($1 per annum or fraction thereof).—Practitioners (physicians, dentists, veterinary surgeons, and other practitioners lawfully entitled to distribute, dispense, give away, or administer marihuana and preparations to patients upon whom they, in the course of their professional practice, are in attendance). With certain exceptions, hospitals, medical and dental clinics, sanatoriums, and other institutions not exempt as public institutions or those coming within the scope of class 5, are included in this class.

Class 5 ($1 per annum or fraction thereof).—Producers or users for laboratory purposes. (Persons not registered in class 1 or 2 who produce or obtain and use marihuana in a laboratory for the purpose of research, instruction, or analysis.)

NOTE.—Persons in class 1 or 2 who have paid special tax for those classes are not required to pay, in addition, special tax in class 3 when selling marihuana of their own production, importation, manufacture, or compounding.

U. S. GOVERNMENT PRINTING OFFICE 16—8818

Form 11
U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised Feb. 1952)

SPECIAL-TAX RETURN

(SEE INSTRUCTIONS ON BACK)

(Stamp number)

(Date of issue)

(Entered in record 10)

Name .....
(Print name, followed by trade name. See par. 2 on reverse side)

Business address .....; .....; .....; .....
(Street and number, or rural route) (City or town) (County) (State)

Kind of tax stamp ..... for period ..... to June 30, 19....
(See list on reverse side for designation) (Month) (Year)

Show by X in one of the following squares the nature of the application:

☐ FIRST APPLICATION. ☐ RENEWAL ☐ CHANGE OF LOCATION (Date) .....

☐ CHANGE OF OWNERSHIP (Date) ..... FORMER OWNER .....

NAME OF INDIVIDUAL OWNER OR IF PARTNERSHIP NAMES OF ALL PARTNERS	HOME ADDRESS

	Dollars	Cents
Cash*		
Certified or Cashier's check*		
Money Order		

*Cross out form of payment NOT used.

Make remittance payable to "Collector of Internal Revenue." Enter amount in above space.

I declare under the penalties of perjury that the above statements are true and correct and the special-tax stamp herein applied for is to cover only the business indicated above and at the location specified.

Dated ....., 19....

(Signed) .....

.....
(State whether individual owner, member of firm, or if officer of corporation, give title)

This return must be in the hands of the Collector of Internal Revenue at ..... with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Checks must be certified.

16—28052-6

LIST OF SPECIAL-TAX PAYERS

Monthly and Annual Rates to June 30	Monthly	Annually
Manufacturer of adulterated butter	$50.00	$600.00
Wholesale dealer—adulterated butter	40.00	480.00
Retail dealer—adulterated butter	4.00	48.00
Manufacturer—process or renovated butter	4.16⅔	50.00
Manufacturer—filled cheese	33.33⅓	400.00
Wholesale dealer—filled cheese	20.83⅓	250.00
Retail dealer—filled cheese	1.00	12.00
Brewer of less than than 500 barrels	4.58⅓	55.00
Brewer of 500 barrels or more	9.16⅔	110.00
Rectifier of less than 500 barrels	9.16⅔	110.00
Rectifier of 500 barrels or more	18.33⅓	220.00
Wholesale dealer in fermented malt liquor	8.33⅓	100.00
Retail dealer in fermented malt liquor	1.83⅓	22.00

Monthly and Annual Rates to June 30	Monthly	Annually
Retail dealer in malt liquors (at large)	$1.83⅓	$22.00
Temporary retail dealer in fermented liquors (malt or vinous)	2.20	
Wholesale liquor dealer	16.66⅔	200.00
Retail liquor dealer	4.16⅔	50.00
Medicinal spirits stamp tax	4.16⅔	50.00
Retail dealer in liquors (at large)	4.16⅔	50.00
Wholesale dealer in wines	16.66⅔	200.00
Retail dealer in wines	4.16⅔	50.00
Wholesale dealer in wines and malt liquors	16.66⅔	200.00
Retail dealer in wines and malt liquors	4.16⅔	50.00
Manufacturer of nonbeverage products:		
User of not more than 25 proof gallons		25.00
User of not more than 50 proof gallons		50.00
User of more than 50 proof gallons		100.00
Manufacturer of stills	4.58⅓	55.00
Stills manufactured—for each still		22.00
Worms manufactured—for each worm		22.00

INSTRUCTIONS

Special-tax liability is reckoned from the first of July of each year, or the first day of the month during which business is commenced, to the thirtieth day of June following. Where business is begun after the month of July the tax to be remitted is computed by multiplying the monthly rate stated above by the number of months remaining in the fiscal year. If the amount resulting involves a fraction the full cent must be included. Example: A wholesale liquor dealer begins business during September; $16.66⅔ multiplied by 10 equals $166.66⅔ or $166.67, the amount to be remitted.

If application on this form is not filed with the Collector during the month in which the liability began the penalty prescribed by section 3612 (d), Internal Revenue Code, is incurred. On the first line must be entered the name of the actual owner or owners of the business, followed by the trade name if one is used; if an individual, the surname, followed by the christian name and initials. No application will be accepted nor special-tax stamp issued in a trade name only. Removal of place of business must be registered with Collector of Internal Revenue within 30 days of such removal, or liability to additional tax and penalty will be incurred. File promptly, follow instructions carefully, and avoid delays.

16—28052-6 U. S. GOVERNMENT PRINTING OFFICE

Form 11-B
U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised Feb. 1951)

PRINT YOUR NAME AND ADDRESS

SPECIAL-TAX RETURN

(SEE INSTRUCTIONS ON BACK)

(Stamp number)

(Date of issue)

(Entered in record 10)

1. Name ..... (Print name, followed by trade name—see paragraph 4 on reverse side)

2. Business address ..... (Street and number, or rural route) ..... (City or town) ..... (County) ..... (State)

3. Kind of tax stamp ..... (See reverse side, separate form necessary for each kind of tax) for period ..... (Month) ..... (Year) to June 30, 19....

Show by X in one of the following squares the nature of the application: ☐ ADDITIONAL UNIT PLACED IN OPERATION. ☐ FIRST APPLICATION. ☐ RENEWAL. ☐ CHANGE OF ADDRESS (Date) .....

☐ CHANGE OF OWNERSHIP (Date) ..... FORMER OWNER .....

NAME OF INDIVIDUAL OWNER, OR IF PARTNERSHIP, NAMES OF ALL PARTNERS	HOME ADDRESS

Indicate below number of machines or units for which you are paying tax on *this* return. File separate return for each kind of tax.

Coin-operated AMUSEMENT DEVICES (any amusement or music machines) . . . . . $10 each	
Coin-operated GAMING DEVICES (slot machines and all other machines involving element of chance) . . . . $250 each See instructions (3)	
Bowling alleys . . . . . $20 each	
Billiard and pool tables . . . . . $20 each	

I declare under the penalties of perjury that the above statements are true and correct to the best of my knowledge and belief, and the special-tax stamp herein applied for is to cover only the business indicated above and at the location specified.

	Dollars	Cents
Cash*		
Certified or Cashier's Check*		
Money Order*		

*Cross out forms of payment NOT used. Make remittance payable to "Collector of Internal Revenue." Enter amount in above space.

(Signed) ..... Date .....

..... (State whether individual owner, member of firm, or if officer of corporation, give title)

Received by collector .....

This return must be in the hands of the Collector of Internal Revenue at ..... with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties.

16-31197-6

33A

INSTRUCTIONS

(For full instructions, see Regulations 59 (1941 Edition), as amended)

Paragraph 1. (a) Under the provisions of section 3267 of the Internal Revenue Code as amended, every person who maintains for use, or permits the use of, on any place or premises occupied by him, a coin-operated amusement or gaming device shall pay a special tax as follows:

(1) $10 per year with respect to each amusement or music machine operated by means of insertion of a coin, token, or similar object.

(2) $10 per year with respect to each vending machine operated by means of the insertion of a 1-cent coin, which, when it dispenses a prize, never dispenses a prize of a retail value of or entitles a person to receive a prize of a retail value of more than 5 cents if the only prize dispensed is merchandise, and not cash or tokens.

(3) $100 per year for the period July 1, 1943, to October 31, 1950, $150 per year for the period November 1, 1950, to October 31, 1951, and $250 per year beginning November 1, 1951, with respect to each "slot" machine which operates by means of insertion of a coin, token, or similar object, and which by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens.

The term "coin-operated amusement or gaming devices" does not include bona fide vending machines in which are not incorporated gaming or amusement features.

(b) Under the provisions of section 3268 of the Internal Revenue Code as amended, every person who operates a bowling alley, billiard room, or poolroom, shall pay a special tax of $20 per year for each bowling alley, billiard table, or pool table. Every building or place where bowls are thrown or where games of billiards or pool are played, except in private homes, shall be regarded as a bowling alley, billiard room, or poolroom, respectively. No tax is imposed with respect to a billiard table or pool table in a hospital if no charge is made for the use of such table.

Paragraph 2. Special tax liability is reckoned from the first of July of each year, or the first day of the month during which business is commenced, to the thirtieth day of June following. Where business is begun after the month of July the tax to be remitted is computed by multiplying the monthly rate by the number of months remaining in the fiscal year. If the amount resulting involves a fraction the full cent must be included.

Paragraph 3. If application on this form is not filed with the Collector during the month in which the liability began the penalty prescribed by section 3612 (d), Internal Revenue Code, is incurred.

Paragraph 4. On the first line must be entered the name of the actual owner or owners of the business, followed by the trade name if one is used, but no application will be accepted nor special-tax stamp issued in a trade name only. Removal of place of business must be registered with Collector of Internal Revenue within 30 days of such removal, or liability to additional tax and penalty will be incurred. File promptly, follow instructions carefully, and avoid delays.

16-31197-6 GPO

THE AMERICAN RACING MANUAL
(1952 Edition, pages 959, 960)

Brief Summary of Tax Methods by States

Arizona Total take-out permitted 15%. The state receives 4% of the gross amount, not to exceed $100,000 of the daily pari-mutuel pool and 6% of the gross amount exceeding $100,000 of the daily mutuel pool. Association receives 11% of the gross amount, not to exceed $100,000 of the daily pari-mutuel pool, and 9% of the gross amount exceeding $100,000 of the daily pari-mutuel pool, plus the odd cents, by which the amount payable on each dollar wagered exceeds a mutiple of 10c.

Arkansas Total take-out 15%. 5% pari-mutuel to state; $500 daily license; 10c tax on admissions; breaks to 10c; 33-1/3% of breakage to state, 33-1/3% of breakage to city where track is located.

California Total take-out 13%; state receives 4% pari-mutuel on first ten million dollars; 5% on next ten million dollars; 6% all over twenty million dollars; employees licenses; law provides breaks to 5c and total amount of breakage above twenty-seven million dollars to be paid to board as part of license fee.

Colorado Total take-out 15%; 10% to associations; 5% to state. All breaks to 10c on the dollar paid to state; license fees.

Delaware Total take-out 10%; 3½% to state; $5,000 per season license; 20c on admissions; breaks to 5c, all to associations.

Florida Total take-out 15%, divided as follows: 7% to association; 3% and admission taxes to be divided equally between each county after racing commission expenses are deducted; 5% to state for Old Age Benefit; breaks to 5c, all to state for Old Age Benefit.

Illinois THOROUGHBRED: Daily license fees $500 to $2,500; tax on admissions 20c; horsemen's license fees; tax on pari-mutuel wagering: racing associations are permitted to withhold as commission 14% (Fairmount Park 15%) of total mutuel handle, plus breakage to 10c, subject to the payment to the state of a tax of 4% and 2% of the total mutuel handle, plus ½ of the breakage. As of April 1st of each year, proceeds from uncashed pari-mutuel tickets sold during the previous year are payable to the State of Illinois for the Illinois Veterans Rehabilitation Fund of the State Treasury. HARNESS: **Effective July 1, 1951 privilege tax increased from 14% to 15%—9½% to be retained by the track and 5½% to be remitted to the state.** Five per cent of the amount received by the state goes into the Agriculture Premium Fund and ½% of the amount received by the state goes into the Illinois Fund for Illinois Sired Colts, which amount shall be divided equally between two races to be held in 1952 called the Illinois State Fair Two-Year-Old Trot and Illinois State Fair Two-Year-Old Pace.

Kentucky Total take-out 13% (Keeneland 10%); 3% pari-mutuel to state; daily license $500 to $2,500; 15c on admissions; breaks to 10c, all to associations.

Louisiana Total take-out 13%; state receives 2% first $100,000; 5% next $50,000; 6% next $50,000; 7% all over $200,000; 10c tax on admissions; license fees and fines. Breaks to 10c, all to association.

Maine THOROUGHBRED: Total take-out 15%; 10% to association and 5% to state; breaks to dime, one-half each to state and association; license fee $5,000 annually. (1950 was first year of thoroughbred racing in Maine.) HARNESS: 15% tax on all pari-mutuel pools; 9½% to association; ½% to State Agriculture Stipend Fund; 5% to State General Fund. Breakage to 5c, retained by association; out-ticket balance held by state for redemption 90 days, then balance refunded to association.

Maryland THOROUGHBRED MILE TRACKS—10% take-out permitted; 4% to state and ½ breakage; license fee $1,000 per day. COUNTY FAIRS—12% take-out permitted; state receives 1% first $1,500,000 wagered, 6% all over $1,500,000, ½ of breakage. HARNESS—12% take-out permitted; state receives 1% first $2,000,000 wagered, 4½% all over $2,000,000, all breakage; license fee $25 per day.

Appendix B

(Congressional Debates.)

Massachusetts THOROUGHBRED—Total take-out permitted 12%; state receives daily handle to $700,000, 5½%; $700,000 to $800,000, 6¾%; $800,000 to $900,000, 7¼%; $900,000 and over, 7¾%; license fee $600 per day. HARNESS—Total take-out permitted 17%; state receives on daily handle, to $400,000, 5½%; $400,000 to $450,000, 6¾%; $450,000 to $500,000, 7¼%; $500,000 to $550,000, 7¾%; $550,000 to $600,000, 8¼%; $600,000 to $650,000 and over, 9¼%; license fee $200 per day. FAIRS—Total take-out permitted 17%; state receives 2% of daily handle plus 3½% of any amount over $65,000 handled daily; License fee $50 per day.

Michigan 11% take-out (THOROUGHBRED: 6% to associations, 5% to state). (HARNESS: 9% to association, 2% to state); breaks to the dime, split equally. License fee, $500 in city area, $100 otherwise.

Nebraska All profits must be expended for improvement of grounds of association or for payment of premiums for livestock shows conducted by association. For this reason, state takes no pari-mutuel tax, a percentage of breaks nor any other taxation, with the exception of 15% on all paid admissions in counties of a certain size (Ak-Sar-Ben only); daily license fee $200 (fairs $15-$50). No pari-mutuel system allowed except for Thoroughbred racing.

New Hampshire THOROUGHBRED: 11½% take-out, plus breakage, with 5% and ½ breakage to state; 6½% plus ½ breakage to association. No license fee, but a bond not exceeding $50,000, is required. (HARNESS: 15% take-out, with 10% to association). Breaks to 10c; one quarter of 1% of pari-mutuel pools allocated among agricultural fairs of state in accordance with competitive or educational premiums paid.

New Jersey THOROUGHBRED: 12% take-out, with 6% to state and 6% to association up to $40,000,000. Above that, 7% to state and 5% to track. State receives all the breaks, all fines, under-pay and all monies held for outstanding winning tickets uncashed at expiration of statutory 60-day holding period. HARNESS: 16% take-out, with 6% to state and 10% to track. Breaks to 10c, all to association. All under-pay to the state, all outstanding tickets to state, all fines to the U. S Trotting Association.

New Mexico 15% total take-out. 15% of total plus breakage retained, with one-third of this amount going to purses, or 5% of each pool. Association pays to state ½ of 1% of gross pool in taxes, also a daily license fee of $50 per day and 10% of the net amount retained on admissions.

New York 15% take-out; breaks to 5c. FLAT RACING: $25 per day license fees; 15% tax on admissions; 60% breaks to state; 6% pools to state; 5% pools to municipalities; Saratoga same except 5% pools and 50% breakage to state. HARNESS: $100 per day license fees. Of 15% take-out, state receives of the total daily pool 5% on first $200,000; 6% from $201,000 to $550,000; 7% all over $550,000. Breakage ½ to state.

Ohio 10% total take-out; state receives 10% first $1,000; 15% next $4,000; 20% next $5,000; 22½% next $5,000; 25% next $5,000; 30% over $20,000. Breaks to 10c, all to association.

Oregon Option 1—Total take-out 12½%; state receives 3% on first $66,000; 4% on next $67,000; 5% on next $67,000; 6% on all over $200,000 wagered any one day; $25 daily license; breaks to 5c, all to association. Option 2—Total take-out 15%; state receives 5% on first $133,000; 6% on next $67,000; 7% on all over $200,000 wagered in any one day; license fee $100 a day; breaks to 5c, all to association. All Fair Meets, license fee $1.00 for the meet under Option 1 or Option 2; breaks to 5c, all to association.

Rhode Island Total take-out 13½%; state receives 7%, association 6½% of total amount wagered; breakage divided equally between state and association; breaks to 10c.

South Dakota Total take-out 12%; 3% to state; 9% to association; $15 per day license fee, breaks to 10c, all to association.

Washington 15% take-out, with 5% to state; breaks to 5c, all to association.

West Virginia 12% take-out, with 3% to state, 9% and breakage to dime to track; uncashed tickets redeemable from racing association one year and redeemable from commission following year, after which funds not claimed revert to state; daily license fee for tracks less than one mile, $250, and for tracks one mile or over, $500.

Racing Days, Attendance by States — 1951

State.	RACING DAYS				ATTENDANCE			
	Total.	Thoroughbred.	Harness.	Fairs.	Total.	Thoroughbred.	Harness.	Fairs.
Arizona	107	87		20	294,645	268,206		26,439
Arkansas	30	30			211,805	211,805		
California	414	274	68	72	4,820,454	4,020,681	351,243	448,530
Colorado	57	57			225,277	225,277		
*Delaware	76	32	44		427,462	368,644	58,838	
Florida	162	162			1,339,485	1,339,485		
*Illinois	374	234	140		3,121,893	2,413,494	708,399	
*Kentucky	119	85	34		587,318	587,318	no record	
Louisiana	76	76			406,939	406,939		
*Maine	182	56	126		217,456	217,456	incomplete	
Maryland	230	100	80	50	1,778,173	1,078,173	400,000	300,000
Massachusetts	145	60	49	36	1,372,468	735,725	243,573	393,170
Michigan	241	112	129		1,774,212	1,226,017	548,195	
Nebraska	80	80			†367,779	367,779		
New Hampshire	60	54	6		536,340	536,340	incomplete	
New Jersey	165	141	24		2,037,340	1,996,451	40,889	
New Mexico	50	50			83,539	83,539		
*New York	636	197	439		8,604,987	4,386,315	4,218,672	
Ohio	432	224	128	80	1,175,730	915,841	259,889	no record
Oregon	87	55		32	210,000	151,000		59,000
Rhode Island	108	108			1,186,173	1,186,173		
South Dakota	19	19			no record	no record		
Washington	92	92			274,128	274,128		
West Virginia	172	172			†811,106	811,106		
Grand total	4,114	2,557	1,267	290	31,864,729	23,807,892	6,829,698	1,227,139

*Flat racing and harness racing under jurisdiction of separate commissions. †Estimated.

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Pari-Mutuel Turnover, Revenue to States — 1951

State.	PARI-MUTUEL TURN-OVER				REVENUE TO STATE			
	Total.	Thoroughbred.	Harness.	Fairs.	Total.	Thoroughbred.	Harness.	Fairs.
Arizona	$ 6,729,096	$ 6,268,167	$	$ 460,929	$ 322,051	$ 299,005	$	$ 23,046
Arkansas	11,000,556	11,000,556			694,080	694,080		
California	302,291,549	263,008,283	20,475,350	18,807,916	16,558,861	14,876,125	903,458	779,278
Colorado	9,723,423	9,723,423			650,236	650,236		
*Delaware	30,352,503	27,667,493	2,685,010		1,148,351	1,047,091	101,260	
Florida	113,358,668	113,358,668			9,814,558	9,814,558		
*Illinois	171,374,244	147,753,830	23,620,414		11,414,566	10,128,816	1,285,750	
*Kentucky	31,561,133	29,773,874	1,787,259		964,147	910,529	53,618	
Louisiana	16,614,392	16,614,392			717,790	717,790		
*Maine	10,710,723	6,867,539	3,843,184		596,587	404,108	192,479	
Maryland	115,029,807	79,626,178	19,487,260	15,916,369	5,495,366	3,886,989	898,240	710,137
Massachusetts	58,648,633	48,149,030	6,696,118	3,803,485	3,811,950	3,209,340	425,250	177,360
Michigan	90,941,466	66,330,429	24,611,027		4,451,515	3,758,151	693,364	
Nebraska	14,465,494	14,465,494			48,453	48,453		
New Hampshire	37,046,303	36,855,103	191,200		2,088,323	2,077,049	11,274	
New Jersey	188,684,295	186,660,867	2,023,428		14,660,260	14,536,432	123,828	
New Mexico	5,089,815	5,089,815			34,851	34,851		
*New York	536,200,513	345,292,092	190,908,421		35,074,565	23,014,367	12,060,198	
Ohio	50,643,600	44,083,481	5,983,452	576,667	1,069,155	968,986	90,676	9,493
Oregon	6,036,266	5,117,716		918,550	298,926	268,663		30,263
Rhode Island	76,713,196	76,713,196			5,469,102	5,469,102		
South Dakota	416,740	416,740			13,146	13,146		
Washington	13,597,744	13,597,744			691,814	691,814		
West Virginia	36,604,200	36,604,200			1,161,911	1,161,911		
Grand total	$1,933,834,349	$1,591,038,310	$302,312,123	$ 40,483,916	$117,250,564	$ 98,681,592	$ 16,839,395	$ 1,729,577

REMARKS—FLORIDA: Not included in above figures are four extra days allowed the State Board of Control Scholarship Fund—total attendance 22,766, total pari-mutuel $1,699,110. ILLINOIS (Thoroughbred): 234 days allotted—two races only on November 6, 1951; no racing on November 7 and November 8, 1951 due to snow and prevailing low temperatures. KENTUCKY: Tax-free admissions at Churchill Downs included in attendance figures. NEW HAMPSHIRE: Harness racing is just one feature of Fair Meeting and no attendance figures available. NEW YORK (Flat Racing): Figures include one day amateur hunt meet; attendance excludes track staff admissions.

STATE OF NEVADA

NEVADA TAX COMMISSION

Carson City, Nevada

R. E. CAHILL
Secretary

July 25, 1952

Mr. Jacob Kossman
Attorney at Law
1325 Spruce Street
Philadelphia 2, Pa.

Dear Sir:

Reference of your letter of July 10, 1952, concerning the number of bookmakers operating in Nevada prior to and subsequent to the enactment of the 10% tax on such operations.

Our records reflect that there were twenty-six race horse books operating in the State prior to the enactment of the tax. There are now five such establishments in Nevada.

There are no lottery operations in the State. Such operations being prohibited by Statute.

Very truly yours,

NEVADA TAX COMMISSION
/s/ WILLIAM G. GALLAGHER,
WILLIAM G. GALLAGHER,
Supervisor
Gambling License Division

WGG:ac

THE EVENING BULLETIN, PHILADELPHIA, WEDNESDAY, SEPTEMBER 10, 1952, P. 33.

"New York, Sept. 10—(AP)—With a fall term of racing yet to come and figures far from complete, a preliminary survey of attendance and betting at the Nation's major tracks today showed a fantastic gain as compared with 1951.

"The thoroughbred racing sport is riding along on its biggest boom since the plush post-war years when the jingle around the pari mutuel windows hit record proportions.

"An Associated Press compilation from the 24 racing states disclosed betting is up at every one of the tracks, by from 8 per cent to 67 per cent.

"The biggest pari-mutuel betting year in the Nation's racing times came in 1946 when the mutuel machines handled $1,830,287,455. Last season the AP nationwide survey showed $1,629,777 wagered, an increase of 17.01 per cent over 1950.

"Attendance totaled 24,302,020 in 1951, a gain of 6.01 per cent over 1950, and revenue to the states reached a record $99,927,423.

"Track officials give various explanations for this year's upsurge. One, the crackdown on illegal bookmaking following the Kefauver Committee hearings; two, an increasing public confidence in the sport, through efforts of the Thoroughbred Racing Protective Bureau to rid racing of the crooked element.

"Whatever the reason, tracks still operating or with race meetings still to be held are reaping the golden harvest.

"The upsurge was indicated for the Nation as a whole when the Florida, California and Louisiana winter tracks did a land office business. It carried through to the northern tracks.

"Bowie, which raced its spring meeting at nearby Laurel, Md., posted a 47 per cent boost in attendance and a whopping 67 per cent jump in mutuel play.

Atlantic City, still operating, reports attendance up 39 per cent, betting up 29. Upstate Saratoga Springs, N. Y., broke all records with the handle up 17.7 per cent, attendance 8.5 per cent.

"Hollywood Park (Calif.) closed its session with betting up 16 per cent. Del Mar, on the West Coast, also is breaking records. Wagering at Golden Gate Fields (Calif.) was up 37, attendance 30 per cent.

"Narragansett, Lincoln Downs, Suffolk Downs, Rockingham in New England reported boosts up to 18 per cent in betting, 12 in attendance."

THE EVENING BULLETIN, PHILADELPHIA, FRIDAY, NOVEMBER 14, 1952

JERSEY TRACKS NET STATE $17,658,477.

Trenton, N. J., Nov. 14—State Treasurer Walter T. Margetts, Jr., today reported the State Treasury has been enriched by $17,658,477.09 from pari-mutuel betting at the State's three race tracks this year.

The amount represents an all time record as total bets placed on horses reached $228,533,669, an increase of 22.5 per cent over last year. Last year the State received revenues totaling $14,420,595.05 from racing.

Attendance at race tracks this year was up 22.1 per cent. Visiting the tracks were 2,447,319 persons, compared with 1,996,451 last year.

Monmouth Park Race Track produced $5,489,667.29 for the State, while the Atlantic City race track turned in $5,363,096.55. Garden State Park, near Camden, turned $6,825,713.25 into the State Treasury.

HORSE RACING.

	NO. OF DAYS IN SPRING. MEET—1951	NO. OF DAYS IN SPRING MEET—1952
Churchill Downs, Kentucky	19	19
	PARI-MUTUEL HANDLE—1951	PARI-MUTUEL HANDLE—1952
	$13,201,405.	$15,504,747.
Keenland Spring Meet, Kentucky	NO. OF DAYS IN 1951	NO. OF DAYS IN 1952
	11	11
	PARI-MUTUEL HANDLE—1951	PARI-MUTUEL HANDLE—1952
	$3,252,933.	$4,023,839.

These figures supplied by the Kentucky State Racing Commission, P. O. Box 1027, Lexington, Kentucky.

HORSE RACING.

	NO. OF DAYS IN 1951	NO. OF DAYS IN 1952
Eastern Racing Assoc. Inc., Suffolk Downs, Boston, Mass.	60	60
	PARI-MUTUEL HANDLE—1951 $48,149,030.	PARI-MUTUEL HANDLE—1952 $54,079,767.

These figures supplied by the State Racing Commission of the Commonwealth of Massachusetts, 1010 Commonwealth Avenue, Boston 15, Massachusetts.

DOG RACING.

	NO. OF DAYS IN 1951	NO. OF DAYS IN 1952
Massasoit Greyhound Assoc., Inc., Raynham Park, Raynham	44	44
	PARI-MUTUEL HANDLE—1951 $8,200,971.	PARI-MUTUEL HANDLE—1952 $8,708,549.

These figures supplied by the State Racing Commission of the Commonwealth of Massachusetts, 1010 Commonwealth Avenue, Boston 15, Massachusetts.

(97 CONG REC 12237-12239.)

"MR. HUNT: One more question. I refer to paragraph (d), the next sub-section: (d) Persons liable for tax: Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery.

What I want to know is how it will be possible to get all these gamblers registered in 47 of the 48 States where it is illegal for them to gamble.

MR. KEFAUVER: Undoubtedly it will simply drive them underground. They are not going to sign a death warrant voluntarily. This would be the first time I know that the Federal tax-collecting system is taken off a voluntary basis and it becomes necessary for Treasury agents to find 3,000 policy runners in a particular city or 7,000 in another city, chase them down, get them to pay their $50 occupational tax, and then see that they pay 10 percent of the amount of money they take in. In my opinion, the provision is impossible of enforcement.

MR. HUNT: One more question, if I may. I read from paragraph (b) on page 254, as follows: (b) Where any taxpayer lays off part or all of a wager with another person who is liable for tax under this subchapter on the amount so laid off, a credit against the tax imposed by this subchapter shall be allowed, or a refund shall be made to, the taxpayer laying off such amount.

The Senator from Tennessee knows from his splendid work in the committee he so ably headed that every

day thousands upon thousands of lay-off bets are made in the United States. I should like to know how a record is going to be kept of every lay-off bet.

MR. KEFAUVER: I would say to the Senator it would be absolutely impossible to do it. We will say that a bet is placed with Carroll in St. Louis, where he is taking thousands of bets a day, and that he lays off 50 percent of that bet with Rosenbaum in Cincinnati, or across the river from Cincinnati, and Rosenbaum lays off a large part of it in New York. To trace transactions of that sort would be a hopeless task; and would require more revenue agents than ever could be found anywhere. I say to the Senator that it is a bad practice to put a law on the books that simply cannot be enforced. That causes, as we all know, disrespect for the Treasury Department, the Internal Revenue Bureau, and on the whole, the Federal Government. This law would simply not be enforceable.

MR. HUNT: I should like to make a brief observation. Mr. President, I sincerely believe that, first, this is an absolutely unenforceable title in this bill, and, secondly, I disagree with it strongly because I believe that it lends to the gambling element a respectability and license to do business, with the approval and O. K. of the Federal Government, which I do not think they should have.

MR. KEFAUVER: Mr. President, I simply wish to say in conclusion that there is some difference between a tax imposed on an operation of a slot machine and the special tax that is imposed on doing a certain type of business. As to a slot machine, at least we have an instrument which is a physical thing, that is to be operated. But here we get away from a physical thing in being. Even a tax on liquor is a tax on something that is there, that is material. And the same thing is true of a slot machine.

MR. KERR: Mr. President, will the Senator yield for a question?

MR. KEFAUVER: In a moment; let me finish my thought. But when we get away from that, in this gambling tax we are taxing a thing that has no place of business and no instrument by which its operations are carried on. The tax is on an illegal way of life. To my mind, we should never have gotten into the slot machine phase by a special basis. How far are we going to go? Now we are going to tax and put, at least what is going to be considered in the eyes of the public, a blessing on the operation of a form of vice, the running of lotteries, bookmaking and policy making, the three kinds of gambling that are bleeding the people all over the country, taking money away from the housewives and factory workers. The amount that is taken away from the people in this manner is terrific. How far are we going to go? If we are going to do that, then are we going to start placing a special tax on burglary tools? Would we want to share the tax that would be collected from prostitutes in the operation of prostitution? Where is the stopping point going to be?

MR. KERR: Mr. President, will the Senator yield for a question?

MR. KEFAUVER: In a moment. I think we are going into the type of thing that is not proper for the Federal Government. In my opinion, we are discouraging local people at a time when they need encouragement, instead of discouragement.

Every editorial I have seen from the great press of the Nation—and they know a greal deal about this problem—takes the same position. I happen to have before me editorials from two of the leading Washington newspapers. This is what the Washington Post of the other day said about it:

An attempt to force gamblers to share their gains with the Government is not only morally indefensible, but the tax itself would probably not yield a great deal of revenue.

I read the last paragraph of the same editorial:

In short, a Federal tax on gambling imposed for the sake of revenue would be no deterrent to tax enforcement of anti-gambling laws at the local level. On the contrary, imposition of that tax would tend to discourage local enforcement efforts by creating the impression that the Federal Government was disposed to condone illegal gambling activities in its search for more revenue.

Let me read two of the last paragraphs of the editorial in the Washington Evening Star on September 10. I read in part from the editorial:

The Bureau is said to have estimated that at least 3,000 additional agents, trained in criminal-type investigation work, would be needed to enforce the excise and occupational taxes.

Let me say at that point that in my opinion 3,000 would not be one-tenth of the number required, if we were actually to enforce the law and ferret out the transitory bookmakers who are here today and gone tomorrow. They know that if they register they will be signing their death warrants. I think it would require an army of 30,000 to 40,000 special agents. Unless we are to enforce the law, there is no use in enacting it. It would only create disrespect for the Government.

Quoting further from the Star editorial:

Such a force would be encroaching on a field hitherto reserved for local law enforcement agencies. Its job would be, first, to determine whether a suspected evader of the gambling taxes actually was engaged in gambling and, second, what his income from that source amounted to. Local police undoubtedly would welcome the invasion of Federal agents into this field, for it would tend to relieve police of a responsibility rightfully theirs.

But the Internal Revenue Bureau never was intended to

become a crime-suppression agency. Congress should give this plan more study than apparently has been given to it to date. In any event, the Bureau could not possibly take on this new burden without a substantial expansion of its present force. If Congress decides to take this drastic step, it should give the Bureau the extra money and staff needed to do the job effectively. Otherwise, the gamblers will benefit from lax enforcement of a Federal law that might encourage lax enforcement of gambling laws at the local level, too.

The imposition of the amendments contained in the substitute, which prevent the charging off of items of operation, would do a great deal toward really eliminating gambling. They would yield many times more than the amount of the proposed tax. The provision which requires the keeping of books would, in my opinion, bring in hundreds of millions of dollars heretofore escaping taxation.

If we can do anything to cut down the amount of racketeering and gambling, if we can continue to give encouragement to the local authorities in their efforts, what will be the result? The result will be to force money which would otherwise go to the professional gamblers into legitimate channels of commerce and trade. I think this point should be understood. Wherever an effort is made with any degree of success to cut down the amount of big-time gambling in any community, the sales of legitimate articles of food, clothing, and other things which the people need and which are worth while immediately go up. As the present occupant of the Chair (Mr. Smathers) knows, that is what happened at Miami and Miami Beach when big-time gambling was closed there.

Tests have been made in various counties in Illinois and other States. That has been the inevitable result. The Senator from Wyoming (Mr. Hunt) stated several times that when gambling was eliminated in a particular city in Wyoming—I believe it was Casper—immediately the sales-tax revenue to the State from that particular section in-

creased. So if we can follow a sensible program instead of giving to gambling a quasi-legal status, we shall have a cleaner America. We can get more tax money for the Federal Government, and more for the State governments.

THE PRESIDING OFFICER: The question is on agreeing to the amendment offered by the Senator from Tennessee (Mr. Kefauver).

MR. JOHNSON of Colorado: Mr. President, the amendment proposed by the junior Senator from Tennessee (Mr. Kefauver) would eliminate entirely from the bill the 10-percent tax on gambling.

The Senator from Tennessee has himself estimated that the total amount gambling turn-over in the United States ranges from $17,000,000,000 to $30,000,000,000. Therefore, after making allowance for the exemption of pari-mutuel betting and the exemption for games such as cards and dice which are provided by the bill, the Senator's own testimony indicates that the base of the proposed gambling tax will range about $12,000,000,000 to about $25,000,000,000 annually, representing a possible tax yield under the 10-percent gambling tax of from $1,200,000.000 to $2,500,000,000 a year. It is this very large potential source of new revenue which the Senator's amendment would strike out of the bill. The committee has estimated the yield of the proposed tax at $400,000,000 a year. As the above figures indicate, this estimate might well prove conservative.

The main concern which has apparently led the Senator to recommend the elimination of the gambling tax is the belief that it will, in effect, sanction the carrying on of gambling activities in violation of State and local laws. The committee did not share this view. Since its inception the Federal income tax has been applied without distinction to income from illegal as well as legal sources, and it has never been seriously supposed that such application carried with it any implied authorization to carry on illegal activi-

ties. No exemption from the Federal liquor taxes is given to bootleg liquor sold in dry States. Moreover, the present tax on coin-operated gambling devices has been applied without regard to whether or not the operation of any particular machine is in violation of State or local law.

No evidence has been submitted which would indicate that such Federal taxation of illegal activities has in any way encouraged the violation of State or local law. The committee's bill conforms to the pattern of the taxes already referred to and imposes the wagering tax without regard to the legality or illegality of the particular transaction. I should like particularly to call to the Senator's attention that the bill specifically provides that payment of either the tax on wagering or the occupational tax on the receipt of wagers shall not serve to exempt any person from any penalties provided under either State or Federal law with respect to engaging in the taxed activities.

Just as the proposed tax does not in any way give Federal authorization to illegal gambling, the bill likewise does not in any way contemplate that the Federal Government will take over the enforcement of State and local anti-gambling laws. The primary purpose of the committee's amendment is to raise revenue, not to encroach in a field which is fundamentally a local responsibility. We are dealing here with a tax bill, not with the criminal code.

Of course, the full, long-range effects of a new tax of this type cannot be predicted with complete accuracy at this time. Substantial compliance with the tax will bring in vast, new amounts of revenue so badly needed at this time. In this regard, it is confidently believed that there will be substantial areas of voluntary compliance with this new tax. On the other hand, where there is willful failure to comply, the Bureau of Internal Revenue will have a powerful new weapon to employ in its enforcement of the tax laws, particularly the income tax, against this racketeering fringe of our population who are thus seeking to evade their full share of the Nation's tax burden. Again, of course,

substantial compliance with the tax will result in a further increase in the betting odds which are already stacked against the individual bettor. Indeed, it may be that the proposed 10 percent Federal bite out of every bet will in the long run convince many bettors that they are playing a losing game. For those who are not so convinced—and there will always be a substantial majority who will not be—the committee's bill will exact a Federal tax for their folly. Thus, it is believed that the proposed tax may represent a far more realistic approach to the gambling problem than would the proposals which would, in effect, attempt to legislate gambling out of existence.

In conclusion, it should be pointed out that commercialized gambling is in the unique position of being a multi-billion-dollar Nation-wide business which has remained comparatively free from taxation by either the State or Federal Governments. This relative immunity from taxation has persisted in spite of the fact that gambling has many characteristics which make it particularly suitable as a subject for taxation. The committee was convinced that the continuance of this immunity is inconsistent with the present need for increased revenue, especialiy at a time when many consumer items of a semi-necessity nature are being called upon to bare new or additional tax burdens.

The distinguished junior Senator from Tennessee has read from editorials published in various newspapers, and I understood him to say that the newspapers were uniformly in favor of his position. I wish to read an article from the Washington Post of June 27, 1951, written by Shirley Povich. It is one of the best analyses of the whole question which has ever been published. The article reads:

The House Ways and Means Committee, from which all Federal tax legislation stems, has now come up with the bright idea of slapping a 10-percent bite on the gross volume of business of the professional gamblers.

But Senator Kefauver, of Crime Committee fame, views it as an idea that is not quite bright despite the very practi-

cal House motive of tapping the underworld bankroll for an estimated $400,000,000 a year.

Senator Kefauver's committee, dedicated to driving the professional gambler out of business and thus striking, too, at corruption of civil officials, shrinks at the House's kind of side-swipe at the gambling business. He protests that any such "occupational tax" would be endowing gambling operations with a sort of Federal license and what he calls quasi legislation.

The Ways and Means Committee's approach to the problem, however, is more direct than Mr. Kefauver's, if not quite as noble. Whereas the Senate Crime Committee calls for law enforcement to kill off the pro gamblers, the House's tax attack is more workable and more certain to accomplish the same end.

The Kefauver group exposed police graft in virtually every city it investigated. But the national crime picture was darker and more sinister at the end of the first phase of the committee's work, which laid bare a whole new mess of problems in connection with gambling operations.

His kind of frontal attack on the gamblers has been attempted before, if not with quite the same intensity. But the Kefauver hearings did prove an effective devise in many instances when it got perjury convictions of some gamblers and some city officials. But the difficulty of convicting big shots of being mobsters by trade apparently has not eased since the Department of Justice had to settle for an income charge against the late Al Capone 20 years ago.

To the credit of the Kefauver group, its investigations served to awaken the public conscience to the vastness and realities of mobster rule and their shocking alliance with public officials. But its interim report, aside from developing names and places of crime and corruption, and calling for more honest law enforcement, outlined no effective and at the same time practical program of getting at the gamblers. The Utopia of rigid law enforcemett is still somewhere in the distance.

But the House of Representatives' tax committee, concerned primarily with developing new Federal revenue in these times of dire need for same, may have unwittingly stumbled onto a better weapon than ever occurred to the Kefauver committee. Gambling may never be law-enforced to death, but there is some basis for belief it could be taxed to death.

Gamblers and mobsters have always had great respect for the Internal Revenue sleuths. They have long been alerted to the fact that income-tax fraud conviction can hit them with the book and are easier to get than gambling or racketeering convictions, most of which are handled on a city, county, or State level anyway.

Since the Capone case, the big gamblers have been careful to be honest with the Internal Revenue Department. If they have not paid willingly out of their big profits, they have at least paid as a precaution. But to this date they have never had to contend with anything like a 10-percent tax on their volume of business.

It is the sort of a tax that, if it doesn't threaten to drive them out of business, offers the kind of temptation that could drive them into the arms of the unrelenting Internal Revenue. The chances are that only the small-fry punks would try to beat the gross-business tax anyway. The big shots know that big-shot gamblers are easily identified, even if gambling convictions are hard to obtain. But the 10-percent volume-of-business tax would strike at the very source of their revenue, perhaps kill it off.

The bookies, unused to taking any the worst of it, would be certain to pass the tax on to the betting public, which would soon tap out under that additional burden. Right now, in baseball, football, and fight betting, the betting public is taking a beating to start with. There are no more even-money shots. The bettor must lay the bookies 6 to 5 for the privilege of taking his choice on what ordinarily would be an even-money bet.

In these days of no Federal tax on the bookie's volume,

the bettor on team A must put up $120 to win $100 on an even-money shot. If the commissioner's book is balanced, another bettor is wagering the same sum on team B. That's $240 in bets the bookie is handling. The 10-percent tax would come to $24. That's deductible from the winner's return. For his $120, he nets a profit of $76 on an even-money shot. That figures out to 3 to 2 that he's laying. That's too much.

The bettor wouldn't be able to stand the gaff. And if it is a horse race he's betting instead of a ball game, the State and track are already taking a 16-percent cut out of his mutuel price. The Federal Government's 10 percent is an additional bite. The bookies would have trouble finding clients willing to take that much the worst of it, even in a sucker community. For the gambling business death and taxes could have a new and literal meaning.

Mr. President, with respect to the approach to the problem by the House Ways and Means Committee, I may say that the Senate Finance Committee, after struggling with this matter for several days, finally decided to take the House bill and the House proposal word for word and line for line.